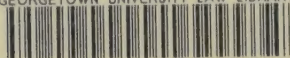


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92d Congress }
1st Session }

COMMITTEE PRINT

LEGISLATIVE HISTORY OF THE
OCCUPATIONAL SAFETY AND HEALTH
ACT OF 1970
(S. 2193, P.L. 91-596)

PREPARED BY THE
SUBCOMMITTEE ON LABOR
OF THE
COMMITTEE ON LABOR AND
PUBLIC WELFARE
UNITED STATES SENATE



JUNE 1971

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Public Welfare

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FOREWORD

The enactment of the Occupational Safety and Health Act of 1970 represents a landmark achievement in safeguarding the health and lives of America's working men and women. Its passage was the culmination of an effort in the 91st Congress to bring significant safety and health protection to the vast majority of American workers through the adoption of not only this act, but also the Coal Mine Health and Safety Act and the Construction Safety Act.

This particular public law can well be said to constitute a safety bill of rights for close to 60 million workers. It has been needed for decades, as the statistics on death and injury in the workplace so thoroughly indicate. The fact that during the period 1960 through 1969 more than 140,000 workers were killed on the job, and nearly 21 million are known to have been injured, is only part of the testimony to the problem.

To the tragedy of industrial accidents must be added the grim history of our failure to heed the occupational health needs of our workers. Not only are occupational diseases which first came to light at the beginning of the Industrial Revolution still undermining the health of workers, but new substances, new processes, and new sources of energy are presenting health problems of ever-increasing complexity.

This background lends emphasis to the need for vigorous enforcement of this present legislation, so that the national neglect which has brought so much pain and suffering to generations of American workers will be a thing of the past.

Enforcement of this law will undoubtedly raise many questions regarding the congressional intent behind its various provisions. To aid those who will be responsible for such enforcement, and the public to which the law's requirements and protections will apply, I have asked the committee staff to compile this legislative history, with the assistance of Mr. Fred E. Strine, of the Office of the Solicitor, U.S. Department of Labor, under whose direction the two indexes were prepared. It is expected that this compilation should also be of considerable benefit to the Congress and, in particular, to the members of the Committee on Labor and Public Welfare, in their continuing legislative review of this act's administration.

HARRISON A. WILLIAMS, Jr.,
Chairman.

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91ST CONGRESS
1ST SESSION

S. 2193

IN THE SENATE OF THE UNITED STATES

MAY 16, 1969

Mr. WILLIAMS of New Jersey (for himself, Mr. KENNEDY, Mr. MONDALE, and Mr. YARBOROUGH) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Occupational Safety and
- 4 Health Act of 1969".

1 **CONGRESSIONAL FINDINGS AND PURPOSE**

2 **SEC. 2. (a)** The Congress finds that personal injuries
3 and illnesses arising out of work situations which result in
4 death or disability impose a substantial burden upon, and are
5 a hindrance to, interstate commerce in terms of lost produc-
6 tion, wage loss, medical expenses, and disability compensa-
7 tion payments.

8 **(b)** The Congress declares it to be the purpose and
9 policy, through the exercise by Congress of its powers to
10 regulate commerce among the several States and with foreign
11 nations and to provide for the general welfare, to assure so
12 far as possible every working man and woman in the Nation
13 **safe and healthful working conditions—**

14 (1) by establishing mandatory occupational safety
15 and health standards applicable to businesses affecting
16 commerce;

17 (2) by providing for the effective enforcement of
18 such safety and health standards;

19 (3) by providing for research relating to occupa-
20 tional safety and health;

21 (4) by providing for training programs to increase
22 and improve personnel engaged in the field of occupa-
23 tional safety and health;

24 (5) by more clearly delineating the responsibilities

1 of the Federal Government and the States in their ac-
2 tivities related to occupational safety and health;

3 (6) by providing grants to the States to assist them
4 in identifying their needs and responsibilities in the
5 area of occupational safety and health, to develop plans
6 in accordance with the provisions of this Act, and to
7 conduct experimental and demonstration projects in
8 connection therewith; and

9 (7) by providing for appropriate accident and
10 health reporting procedures which will help achieve
11 the objectives of this Act.

12 STANDARDS

13 SEC. 3. (a) For purposes of this section:

14 (1) The term "occupational safety and health stand-
15 ard" means a standard which requires conditions, or the
16 adoption or use of one or more practices, means, methods,
17 operations, or processes, reasonably necessary to provide
18 safe or healthful employment and places of employment.

19 (2) The term "national consensus standard" means
20 any occupational safety or health standard adopted under
21 a consensus method by a nationally recognized standards
22 producing organization.

23 (3) The term "established Federal standard" means
24 any occupational safety or health standard already estab-

lished by any agency of the United States, or contained in any Act of Congress in force on the date of enactment of this Act, but before the exercise by the Secretary, with respect to the issues covered by such standards, of his authority under section 13.

(b) Except as provided in section 12 (h) of this Act, each employer engaged in a business affecting commerce shall comply with occupational safety and health standards promulgated by the Secretary. Such standards shall be promulgated, modified or revoked by the Secretary by rule in accordance with subsection (c), (d), (e), or (f).

(c) The Secretary may by rule promulgate any occupational safety and health standard which is a national consensus standard. If the nationally recognized standards producing organization which adopted the national consensus standard upon which an occupational safety and health standard promulgated under this subsection was based modifies or revokes such national consensus standard under a consensus method, the Secretary may by rule modify or revoke the standard promulgated by him to the same extent. Section 553 of title 5, United States Code, shall not apply to any rule issued under this subsection.

(d) The Secretary may by rule promulgate any occupational safety and health standard which is an established

1 Federal standard. Section 553 of title 5, United States Code,
2 shall not apply to any rule issued under this subsection.
3 Subsection (f) shall apply to the modification or revocation
4 of any standard promulgated under this subsection.

5 (e) The Secretary may by rule promulgate an interim
6 occupational safety and health standard which is a standard
7 proposed by a nationally recognized standards producing
8 organization by other than a consensus method, whenever he
9 finds (and incorporates the finding and a brief statement of
10 the reasons therefor in the rule issued) that such rule making
11 without the notice and procedures provided by subsection
12 (f) of this section and by section 553 of title 5, United
13 States Code, is necessary in the public interest. Such a stand-
14 ard may remain in effect for not more than six months from
15 its effective date, except that the Secretary may extend such
16 interim standard for an additional twelve months if at the
17 time he originally promulgates such a standard he com-
18 mences (by appointing an advisory committee) a proceeding
19 under subsection (f) dealing with the same subject matter
20 as the interim standard, and such additional occupational
21 safety or health issues as he deems relevant. If an interim
22 standard is promulgated under this subsection, no additional
23 standard dealing with the same subject may be promulgated

1 except in the manner required by subsection (c), (e), or
2 (f) of this section.

3 (f) The Secretary may, by rule, promulgate, modify
4 or revoke any occupational safety and health standard in the
5 following manner:

6 (1) Whenever the Secretary is of the opinion such
7 a rule should be prescribed, he shall appoint an advisory
8 committee under section 4 (b) of this Act, which shall
9 submit to him within two hundred and seventy days from
10 its appointment or within such longer period as may be
11 prescribed by the Secretary, its recommendations regard-
12 ing the rule to be prescribed, which recommendations
13 shall be published by the Secretary in the Federal Reg-
14 ister, either as part of a subsequent notice of hearing or
15 separately.

16 (2) After the submission of such recommendations,
17 the Secretary shall schedule and give notice of a hearing
18 on the recommendations of the advisory committee and
19 any other relevant subjects and issues. In the event that
20 the advisory committee fails to submit recommendations
21 within two hundred and seventy days from its appoint-
22 ment (or such longer period as the Secretary has pre-
23 scribed) he may schedule and give notice of a hearing on
24 any proposal relevant to the purpose for which the ad-
25 visory committee was appointed. In either case, notice of

1 the time and place of any such hearing shall be published
2 in the Federal Register thirty days prior to the hearing
3 and shall contain the recommendations of the advisory
4 committee or the proposal made in absence of such rec-
5 ommendation. Prior to the hearing interested persons
6 shall be afforded an opportunity to submit comments
7 upon the recommendations of the advisory committee
8 or other proposal. Only persons who have submitted such
9 comments shall have a right at such hearing to submit
10 oral or written evidence, data, views, or arguments.

11 (3) Upon the entire record before him, including
12 the advisory committee recommendations and any evi-
13 dence, data, views, and arguments submitted in connec-
14 tion with the hearing, the Secretary may issue a rule
15 promulgating, modifying, or revoking an occupational
16 safety and health standard. The rule shall not become
17 effective for at least thirty days after publication in the
18 Federal Register.

19 (g) This Act shall not apply with respect to employ-
20 ment performed in a workplace within a foreign country or
21 within territory under the jurisdiction of the United States
22 other than the following: a State; Outer Continental Shelf
23 lands defined in the Outer Continental Shelf Lands Act;
24 American Samoa; Wake Island; Eniwetok Atoll; Kwajalein
25 Atoll; Johnston Island; and the Canal Zone.

ADMINISTRATION: ADVISORY COMMITTEES

SEC. 4. (a) In carrying out his responsibilities under this Act, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and employees of such agency with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or subdivision with or without reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of \$100 per diem, including traveltime; and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

(b) The Secretary shall appoint advisory committees to recommend occupational safety and health standards under section 3 (f) (1) of this Act. Each such advisory committee shall include among its members an equal number of persons

1 qualified by experience and affiliation to present the view-
2 point of the employers involved, and of persons similarly
3 qualified to present the viewpoint of the workers involved,
4 as well as one or more representatives of health or safety
5 agencies of the States, one or more representatives of pro-
6 fessional organizations of technicians or professionals
7 specializing in occupational safety or health, and one
8 or more representatives of nationally recognized standards
9 producing organizations. An advisory committee may also
10 include such other persons as the Secretary may appoint
11 who are qualified by knowledge and experience to make a
12 useful contribution to the work of the committee, but the
13 number of persons so appointed to any advisory committee
14 shall not exceed the number appointed to such committee
15 as representatives of State agencies, professional organiza-
16 tions, and standards producing organizations. Persons ap-
17 pointed to advisory committees from private life shall be
18 compensated in the same manner as consultants or experts
19 under subsection (a) (2) of this section. The Secretary shall
20 pay to any State which is the employer of a member of the
21 committee who is a representative of the health or safety
22 agency of that State, reimbursement sufficient to cover the
23 actual cost to the State resulting from such representative's
24 membership on the committee.

(c) (1) The Secretary shall appoint a National Advisory Committee on Occupational Safety and Health (hereafter in this subsection referred to as "Committee") consisting of sixteen members appointed without regard to the civil service laws and composed equally of representatives of management, labor, occupational safety and health professions, and the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to, the Secretaries of Labor and Health, Education, and Welfare on matters relating to the administration of this Act. The Committee shall hold no fewer than two meetings during each calendar year.

(3) The members of the Committee shall be compensated in accordance with the provisions of subsection (a) (2) of this section.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

INSPECTIONS AND INVESTIGATIONS

SEC. 5. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter upon at reasonable times any factory, plant, establishment, mine, construction site, or other area, workplace, or environment where work is performed by an employee of an employer or on a contract described in section 10 (a) ; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such area, workplace, or environment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question any such employee.

(b) For the purpose of carrying out his duties under this Act, the Secretary may delegate his authority under this section to any agency of the Federal Government with or without reimbursement, and, with its consent and with or without reimbursement and under conditions the Secretary may prescribe, to any appropriate State agency or agencies designated by the Governor of the State.

SEC. 6. (a) (1) If, upon inspection or investigation, the Secretary determines that any employer has violated any standard promulgated under section 3 or that any person has violated any regulation prescribed under subsection (b) of this section or any contractual requirement of section 10 (a) , he shall hold a hearing (in accordance with section 554 of

1 title 5, United States Code, but without regard to subsec-
2 tion (a) (3) of such section), and shall issue such orders,
3 and make such decisions, based upon findings of fact, as are
4 deemed to be necessary to enforce such standard, regulation,
5 or requirement. The Secretary shall give such person the in-
6 formation required by section 554 (b) of such title at least 15
7 days prior to hearing. The Secretary shall have the power
8 to issue orders requiring the attendance and testimony of
9 witnesses and the production of evidence under oath. Wit-
10 nesses shall be paid the same fees and mileage that are
11 paid witnesses in the courts of the United States. In case of
12 contumacy, failure, or refusal of any person to obey such
13 an order, any district court of the United States or the
14 United States courts of any territory or possession, within
15 the jurisdiction of which the inquiry is carried on, or within
16 the jurisdiction of which such person is found, or resides or
17 transacts business, upon the application by the Secretary,
18 shall have jurisdiction to issue to such person an order
19 requiring such person to appear to produce evidence if, as,
20 and when so ordered, and to give testimony relating to the
21 matter under investigation or in question; and any failure
22 to obey such order of the court may be punished by said
23 court as a contempt thereof.

24 (2) If an inspection or investigation discloses (A) that
25 an employer has violated a standard promulgated under sec-

tion 3 or that any person has violated a contractual requirement of section 10 (a), and (B) that conditions or practices in such place of employment are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, the Secretary may (notwithstanding the provisions of paragraph (1) of this subsection) issue an order providing for the immediate cessation of such violation and for the prohibition of the employment of any individuals in locations or under conditions where such violations exist, except to correct or remove the violation. Such order may remain in effect during the pendency of any proceeding under paragraph (1) of this subsection.

(b) Each employer shall make, keep, and preserve, and make available to the Secretary such records concerning the requirements of section 3 of this Act, and shall make reports therefrom to the Secretary, as he may prescribe by regulation or order as necessary or appropriate for the enforcement of this Act.

JUDICIAL PROCEEDINGS

SEC. 7. (a) The district courts of the United States shall have jurisdiction to enforce (by restraining order, injunction, or otherwise) any order of the Secretary under section 6 (a) of this Act. Any person aggrieved by an order

1 issued under section 6 (a) may obtain review thereof by
2 such courts based upon the record before the Secretary.

3 (b) If the Secretary arbitrarily or capriciously issues an
4 order under section 6 (a) (2) and the person to whom the
5 order is directed is injured in his business or property by
6 reason of such order, such person may bring an action against
7 the United States in the Court of Claims in which he may
8 recover the damages he has sustained.

9 **CONFIDENTIALITY OF TRADE SECRETS**

10 **SEC. 8.** In connection with any proceeding under this
11 Act no witness or any other person shall be required to
12 divulge trade secrets or secret processes.

13 **PENALTIES**

14 **SEC. 9. (a)** Any employer who violates any standard
15 promulgated under section 3 of this Act or any person who
16 violates any regulation prescribed under section 6 or
17 any contractual requirement of section 10 (a), may be as-
18 sessed by the Secretary, pursuant to an order issued under
19 section 6 (a) (1) of this Act, a civil penalty of not more than
20 \$1,000 for each violation. Each violation shall be a separate
21 offense. When the violation is of a continuing nature, each
22 day during which it continues after a reasonable time speci-
23 fied in an order issued under section 6 (a) (1) shall constitute
24 a separate offense except during the time a review of the
25 order under section 6 (a) (1) may be taken, or such review

1 is pending, and during the time allowed in the order under
2 section 6 (a) (1) for correction. The Secretary may compro-
3 mise, mitigate, or settle any claim for civil penalties. In as-
4 sessing the penalty, consideration shall be given to the
5 appropriateness of the penalty to the size of the business of
6 the person charged and the gravity of the violation.

7 (b) Any person who willfully violates or fails or refuses
8 to comply with any order issued under section 6 (a)
9 of this Act shall be guilty of a misdemeanor, and upon con-
10 viction shall be punished by a fine of not more than \$5,000
11 or by imprisonment for not more than six months, or by both
12 such fine and imprisonment; except that if the conviction
13 is for a violation committed after a first conviction of such
14 person, punishment shall be by a fine of not more than
15 \$10,000 or by imprisonment for not more than one year, or
16 by both such fine and imprisonment.

17 (c) Any person who forcibly assaults, resists, opposes,
18 impedes, intimidates, or interferes with any person while
19 engaged in or on account of the performance of inspections
20 or investigatory duties under this Act shall be fined not
21 more than \$5,000 or imprisoned not more than three years,
22 or both. Whoever, in the commission of any such acts, uses
23 a deadly or dangerous weapon, shall be fined not more than
24 \$10,000 or imprisoned not more than ten years, or both.
25 Whoever kills any person while engaged in or on account

1 of the performance of inspecting or investigating duties under
2 this Act shall be punished by imprisonment for any term of
3 years or for life.

4 (d) Any person who gives advance notice of any in-
5 spection to be conducted under this Act, without authority
6 from the Secretary, or his designees, shall be fined not
7 more than \$10,000 or imprisoned not more than five years,
8 or both.

9 GOVERNMENT CONTRACTS

10 SEC. 10. (a) Each contract exceeding \$2,500 and
11 requiring or involving the employment of any person (1)
12 to which the United States or any agency or instrumentality
13 thereof, or the District of Columbia is a party, (2) which
14 is made for or on behalf of the United States, any agency
15 or instrumentality thereof or the District of Columbia,
16 or (3) which is financed in whole or in part by loans or
17 grants from, or loans insured or guaranteed by, the United
18 States or any agency or instrumentality of the United States,
19 shall include the requirement that no part of such contract
20 (or any subcontract thereunder) will be performed in any
21 place or under any conditions which do not meet the applica-
22 ble occupational safety and health standards. The applicable
23 occupational safety and health standards shall be the stand-
24 ards promulgated by the Secretary under section 3 of this
25 Act, except that, to the extent that the contract will be per-

1 formed in a State in which there is in effect a State plan
2 approved under section 12 (d) which provides for the de-
3 velopment and enforcement of safety and health standards
4 relating to one or more occupational safety or health issues,
5 the applicable occupational safety and health standards relat-
6 ing to such issues shall be those developed and enforced under
7 the State plan rather than those promulgated by the Secre-
8 tary under section 3.

9 (b) In promulgating standards under section 3 of this
10 Act, the Secretary shall to the extent feasible conform such
11 standards to those occupational safety and health standards
12 established under other laws administered by him.

13 (c) In addition to the remedies otherwise provided in
14 this Act, the Secretary may declare ineligible to receive any
15 contract described in subsection (a) of this section any per-
16 son or firm, or any firm, corporation, partnership, or associa-
17 tion in which such person or firm has a controlling interest,
18 which is found to have disregarded its obligations under this
19 section until such person or firm has satisfied the Secretary
20 that it will comply with the requirements of this section.

21 (d) In addition to the remedies otherwise provided in
22 this Act, the Secretary may recommend to the appropriate
23 contracting agency that such agency cancel, terminate, sus-
24 pend, or cause to be canceled, or suspended, any contract

1 made by any contracting agency for the failure of the con-
2 tractor to comply with an order of the Secretary issued under
3 section 6 (a) (1) of this Act for the breach or violation by
4 such employer of the requirements under subsection (a) of
5 this section.

6 VARIATIONS, TOLERANCES, AND EXEMPTIONS

7 SEC. 11. The Secretary may provide such reasonable
8 limitations and may make such rules and regulations allow-
9 ing reasonable variations, tolerances, and exemptions to and
10 from any or all provisions of this Act as he may find neces-
11 sary and proper in the public interest or to avoid serious
12 impairment of the conduct of Government business. The
13 Secretary shall keep an appropriately indexed record of all
14 variations, tolerances, and exemptions granted under this
15 section, which shall be open for public inspection.

16 EFFECTIVE DATE: FEDERAL-STATE RELATIONSHIP

17 SEC. 12. (a) (1) Except as otherwise provided in this
18 section, this Act shall be effective on the first day of the
19 first month after the date of its enactment.

20 (2) Sections 6, 7, 9, and standards promulgated under
21 section 3 shall not take effect until July 1, 1970. Section 10
22 shall not apply to contracts entered into before July 1, 1970.

23 (b) Nothing in this Act shall be deemed to prevent any
24 State agency or court from asserting jurisdiction over any

1 occupational safety or health issue with respect to which
2 no standard is in effect under section 3.

3 (c) Any State which, at any time, desires to assume
4 responsibility for development and enforcement in such State
5 of occupational safety or health standards relating to any
6 occupational safety or health issue with respect to which
7 a Federal standard has been promulgated under section 3
8 shall submit a State plan for the development of such stand-
9 ards and their enforcement.

10 (d) The Secretary shall approve the plan submitted
11 by a State under subsection (c), or any modification thereof,
12 if such plan in his judgment—

13 (1) designates a State agency or agencies as the
14 agency or agencies responsible for administering the plan
15 throughout the State,

16 (2) provides for the development and enforcement
17 of safety and health standards relating to one or more
18 safety or health issues, which standards (and the en-
19 forcement of which standards) are or will be substan-
20 tially as effective in providing safe and healthful
21 employment and places of employment as the standards
22 promulgated under section 3 which relate to the same
23 issues,

1 (3) provides for the effective right of entry and
2 inspection of all workplaces subject to the Act,

3 (4) contains satisfactory assurances that such
4 agency or agencies have or will have the legal author-
5 ity and qualified personnel necessary for the enforce-
6 ment of such standards,

7 (5) gives satisfactory assurances that such State will
8 devote adequate funds to the administration and enforce-
9 ment of such standards, and

10 (6) provides that the State agency will make such
11 reports to the Secretary in such form and containing
12 such information, as the Secretary shall from time to
13 time require.

14 (e) If the Secretary rejects a plan submitted under
15 subsection (d), he shall afford the State submitting the plan,
16 due notice and opportunity for a hearing.

17 (f) After the Secretary approves a State plan submitted
18 under subsection (b), he may, but shall not be required to,
19 exercise his authority under sections 5, 6, 7, and 9, with
20 respect to comparable standards promulgated under section 3,
21 for the period specified in the next sentence. The Secretary
22 may exercise the authority referred to above until he deter-
23 mines, on the basis of actual operations under the State plan,
24 that it meets the criteria set forth in subsection (d), but he
25 shall not make such determination for at least one year after

1 the plan's approval under subsection (d). Upon making
2 the determination referred to in the preceding sentence, the
3 provisions of sections 5, 6, 7, and 9, and standards promul-
4 gated under section 3 of this Act, shall not apply with
5 respect to any occupational safety or health issues covered
6 under the plan.

7 (g) The Secretary shall, on the basis of reports sub-
8 mitted by the State agency and his own inspections make a
9 continuing evaluation of the manner in which each State
10 having a plan approved under this section is carrying out
11 such plan. Whenever the Secretary finds, after affording due
12 notice and opportunity for a hearing, that in the administra-
13 tion of the State plan there is a failure to comply substantially
14 with any provision of the State plan (or any assurance
15 contained therein), he shall notify the State agency of his
16 withdrawal of approval of such plan and upon receipt of such
17 notice such plan shall cease to be in effect.

18 RELATIONSHIP TO OTHER FEDERAL PROGRAMS

19 SEC. 13. When the Secretary promulgates a set of occu-
20 pational safety and health standards applicable to an industry
21 and he determines (and so certifies) that such standards will
22 be substantially as effective in providing safe and healthful
23 employment and places of employment as other safety and
24 health standards applicable to such industry which were
25 promulgated under authority of other Federal laws, then such

1 other standards shall be deemed repealed and rescinded on
2 the effective date of the standards promulgated under this
3 Act, except that proceedings already begun may be carried
4 on to completion.

5 FEDERAL AGENCY SAFETY PROGRAMS AND
6 RESPONSIBILITIES

7 Sec. 14. (a) It shall be the responsibility of the head
8 of each Federal agency to establish and maintain an effective
9 and comprehensive occupational safety and health program
10 which is consistent with the standards promulgated by the
11 Secretary under section 3. The head of each agency shall
12 (after consultation with representatives of the employees
13 thereof) —

14 (1) provide safe and healthful places and condi-
15 tions of employment, consistent with the standards set
16 under section 3;

17 (2) acquire, maintain, and require the use of safety
18 equipment, personal protective equipment, and devices
19 reasonably necessary to protect employees;

20 (3) keep adequate records of all occupational acci-
21 dents and illnesses for proper evaluation and necessary
22 corrective action; and

23 (4) make an annual report to the President with
24 respect to occupational accidents and injuries and the
25 agency's program under this section. Such report shall

1 include any report submitted under section 7902 (e) (2)
2 of title 5, United States Code.

3 (b) The President shall transmit annually to the Senate
4 and House of Representatives a report of the activities of
5 each Federal agency under this section.

6 RESEARCH AND RELATED ACTIVITIES

7 SEC. 15. (a) (1) The Secretary of Health, Education,
8 and Welfare, after consultation with the Secretary and with
9 other appropriate Federal departments or agencies, shall
10 conduct (directly or by grants or contracts) research, experi-
11 ments, and demonstrations relating to occupational safety
12 and health.

13 (2) The Secretary of Health, Education, and Welfare
14 shall from time to time consult with the Secretary in order
15 to develop specific plans for such research, demonstrations,
16 and experiments as are necessary to produce criteria enabling
17 the Secretary to meet his responsibility for the formulation
18 of safety and health standards under this Act; and the Sec-
19 retary of Health, Education, and Welfare, on the basis of
20 such research, demonstrations, and experiments and any
21 other information available to him, shall develop such
22 criteria.

23 (b) The Secretary of Health, Education, and Welfare
24 is authorized to make inspections as provided in section 5

1 of this Act in order to carry out his functions and responsi-
2 bilities under this section.

3 (c) The Secretary of Labor is authorized to enter into
4 contracts, agreements, or other arrangements with appropri-
5 ate public agencies or private organizations for the purpose
6 of conducting studies related to his responsibilities for estab-
7 lishing and applying occupational safety and health standards
8 under section 3 of this Act. In carrying out his responsibili-
9 ties under this subsection, the Secretary shall consult with the
10 Secretary of Health, Education, and Welfare in order to
11 avoid any duplication of efforts under this section.

12 (d) The Secretary, after consultation with the Secretary
13 of Health, Education, and Welfare, and with the appropriate
14 official in each State as duly designated by such State, shall
15 establish such accident and health reporting systems for
16 employers and for the States as he deems necessary to
17 carry out his responsibilities under this Act.

18 **TRAINING AND EMPLOYEE EDUCATION**

19 **SEC. 16.** (a) The Secretary of Health, Education, and
20 Welfare, after consultation with the Secretary of Labor and
21 with other appropriate Federal departments and agencies,
22 shall conduct, directly or by grants or contracts (1) educa-
23 tion programs to provide an adequate supply of qualified
24 personnel to carry out the purposes of this Act, and (2) in-

1 formational programs on the importance of and proper use of
2 adequate safety equipment.

3 (b) The Secretary is also authorized to conduct (directly
4 or by grants or contracts) short-term training of personnel
5 engaged in work related to his responsibilities under this Act.

6 (c) The Secretary, in consultation with the Secretary
7 of Health, Education, and Welfare, shall provide for the
8 establishment and supervision of programs for the education
9 and training of employers and employees in the recognition,
10 avoidance, and prevention of unsafe or unhealthful working
11 conditions in employments covered by this Act, and to con-
12 sult with and advise employers as to effective means of pre-
13 venting occupational injuries and illnesses.

14 GRANTS TO THE STATES

15 SEC. 17. (a) The Secretary is authorized, during the
16 fiscal year ending June 30, 1969, and the two succeeding
17 fiscal years, to make grants to the States to assist them (1)
18 in identifying their needs and responsibilities in the area of
19 occupational safety and health, (2) in developing State
20 plans under section 12, or (3) in developing plans for—

21 (A) establishing systems for the collection of in-
22 formation concerning the nature and frequency of occu-
23 pational injuries and diseases;

24 (B) increasing the expertise and enforcement capa-

1 bilities of their personnel engaged in occupational safety
2 and health programs; or

3 (C) otherwise improving the administration and
4 enforcement of State occupational safety and health
5 laws, including standards thereunder, consistent with the
6 objectives of this Act.

7 (b) The Secretary is authorized, during the fiscal year
8 ending June 30, 1969, and the two succeeding fiscal years, to
9 make grants to the States for experimental and demonstration
10 projects consistent with the objectives set forth in subsection
11 (a) of this section.

12 (c) The Governor of the State shall designate the ap-
13 propriate State agency, or agencies, for receipt of any grant
14 made by the Secretary under this section.

15 (d) Any State agency, or agencies, designated by the
16 Governor of the State, desiring a grant under this section
17 shall submit an application therefor to the Secretary.

18 (e) The Secretary shall review the application, and
19 shall, after consultation with the Secretary of Health, Edu-
20 cation, and Welfare, approve or reject such application.

21 (f) The Federal share for each State grant under sub-
22 section (a) or (b) of this section may be up to 90 per
23 centum of the State's total cost.

24 (g) The Secretary is authorized to make grants to the
25 States to assist them in administering and enforcing pro-

1 grams for occupational safety and health contained in State
2 plans approved by the Secretary pursuant to section 12 of
3 this Act. The Federal share for each State grant under this
4 subsection may be up to 50 per centum of the State's total
5 cost.

6 (h) Prior to June 30, 1971, the Secretary shall, after
7 consultation with the Secretary of Health, Education, and
8 Welfare, transmit a report to the President and to Congress,
9 describing the experience under the program and making any
10 recommendations as he may deem appropriate.

11 EFFECT ON OTHER LAWS

12 SEC. 18. Nothing in this Act shall be construed or held to
13 supersede or in any manner affect any workmen's com-
14 pensation law or to enlarge or diminish or affect in any other
15 manner the common law or statutory rights, duties, or liabili-
16 ties of employers and employees under any law with re-
17 spect to injuries, occupational or other diseases, or death
18 of employees arising out of, or in the course of employment.

19 AUDITS

20 SEC. 19. (a) Each recipient of a grant under this Act
21 shall keep such records as the Secretary shall prescribe, in-
22 cluding records which fully disclose the amount and disposi-
23 tion by such recipient of the proceeds of such grant, the
24 total cost of the project or undertaking in connection with
25 which such grant is made or used, and the amount of that

1 portion of the cost of the project or undertaking supplied
2 by other sources, and such other records as will facilitate an
3 effective audit.

4 (b) The Secretary and the Comptroller General of the
5 United States, or any of their duly authorized representa-
6 tives, shall have access for the purpose of audit and examina-
7 tion to any books, documents, papers, and records of the
8 recipients of any grant under this Act that are pertinent to
9 any such grant.

10 REPORTS

11 SEC. 20. Within one hundred and twenty days following
12 the convening of the first session of each Congress, the Sec-
13 retary and the Secretary of Health, Education, and Welfare
14 shall jointly prepare and submit to the President for trans-
15 mittal to the Congress a biennial report upon the subject
16 matter of this Act, the progress concerning the achievement
17 of its purposes, the needs and requirements in the field of
18 occupational safety and health, and any other relevant infor-
19 mation, and including any recommendations they may deem
20 appropriate.

21 APPROPRIATIONS

22 SEC. 21. There are authorized to be appropriated to
23 carry out this Act not to exceed \$20,000,000 for the fiscal
24 year ending June 30, 1969, not to exceed \$50,000,000 for

1 the fiscal year ending June 30, 1970, and for each subse-
2 quent fiscal year such sums as the Congress shall deem
3 necessary.

4 DEFINITIONS

5 SEC. 22. For the purposes of this Act:

6 (a) The term "Secretary" means the Secretary of
7 Labor or his duly authorized representative.

8 (b) The term "~~commerce~~"; means trade, traffic,
9 commerce, transportation, or communication among the
10 several States; or between a State and any place outside
11 thereof; or within the District of Columbia, or a posses-
12 sion of the United States, or between points in the same
13 State but through a point outside thereof.

14 (c) The term "person" means one or more individ-
15 uals, partnerships, associations, corporations, business
16 trusts, legal representatives, or any organized groups of
17 persons.

18 (d) The term "employer" means a person engaged
19 in a business affecting commerce who has employees, but
20 does not include the United States or any State or polit-
21 ical subdivision of a State.

22 (e) The term "State" includes a State of the
23 United States, the District of Columbia, Puerto Rico,
24 the Virgin Islands, Guam, and American Samoa.

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SEPARABILITY

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SEC. 23. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

91ST CONGRESS
1ST SESSION

S. 2788

IN THE SENATE OF THE UNITED STATES

AUGUST 6 (legislative day, AUGUST 5), 1969

Mr. JAVITS introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To provide a comprehensive program for assuring safe and healthful working conditions for working men and women by creating a National Occupational Safety and Health Board to be appointed by the President for the purpose of setting mandatory safety and health standards; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Occupational Safety and
- 4 Health Act of 1969."

VII—O

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that personal injuries and illnesses arising out of work situations which result in death or disability impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be the purpose and policy, through the exercise by Congress of its powers to regulate commerce among the several States and with foreign nations to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to recognize the humanitarian considerations in preserving our human resources—

(1) by encouraging employers in their efforts to reduce the number of occupational injuries and health hazards in their establishments, and to stimulate employers to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by building upon advances already made through employer initiative for providing safe and healthful working conditions;

(3) by creating a National Occupational Safety and Health Board to be appointed by the President for

1 the purpose of setting mandatory occupational safety
2 and health standards applicable to businesses affecting
3 commerce;

4 (4) by providing for research in the field of occupa-
5 tional safety and health, including the psychological
6 factors involved, and by developing innovative methods,
7 techniques and approaches for dealing with occupational
8 safety and health problems;

9 (5) by exploring ways to discover latent diseases,
10 establishing causal connections between diseases and
11 work in environmental conditions, and conducting other
12 research relating to health problems, in recognition of
13 the fact that occupational health standards present prob-
14 lems often different from those involved in occupational
15 safety;

16 (6) by providing for training programs to increase
17 the number and competence of personnel engaged in the
18 field of occupational safety and health;

19 (7) by providing for the effective enforcement of
20 such safety and health standards;

21 (8) by encouraging the States to assume the fullest
22 responsibility for the administration and enforcement of
23 their occupational safety and health laws by providing
24 grants to the States to assist in identifying their needs
25 and responsibilities in the area of occupational safety and

1 health, to develop plans in accordance with the provisions
2 of this Act, to improve the administration and enforce-
3 ment of State occupational safety and health laws, and to
4 conduct experimental and demonstration projects in con-
5 nection therewith;

6 (9) by providing for appropriate accident and
7 health reporting procedures which will help achieve the
8 objectives of this Act; and

9 (10) by encouraging joint labor-management efforts
10 and improved employee work practices to reduce the
11 number of such injuries and diseases.

12 DEFINITIONS AND JURISDICTION

13 SEC. 3. (a) For the purposes of this Act:

14 (1) The term "Secretary" means the Secretary of Labor
15 or his duly authorized representative.

16 (2) The term "Board" means the National Occupa-
17 tional Safety and Health Board established under section 5
18 of this Act.

19 (3) The term "commerce" means trade, traffic, com-
20 merce, transportation, or communication among the several
21 States; or between a State and any place outside thereof; or
22 within the District of Columbia, or a possession of the United
23 States, other than a State as defined in subsection (a) (6) of
24 this section, or between points in the same State but through
25 a point outside thereof.

1 (4) The term "person" means one or more individuals,
2 partnerships, associations, corporations, business trusts, legal
3 representatives, or any organized group of persons.

4 (5) The term "employer" means a person engaged in
5 a business affecting commerce who has employees, but does
6 not include: the United States or any State or political sub-
7 division of a State; any nonagricultural employer who em-
8 ployed no more than three employees at any time during
9 the preceding calendar year; and any agricultural employer
10 who did not, during any calendar quarter during the preced-
11 ing calendar year, use more than five hundred man-days of
12 hired farm labor.

13 (6) The term "State" includes a State of the United
14 States, the District of Columbia, Puerto Rico, the Virgin
15 Islands, and Guam.

16 (7) The term "industry " means a trade, business, in-
17 dustry, or branch thereof, or group of industries, in which
18 individuals are gainfully employed.

19 (8) The term "occupational safety and health stand-
20 ard" means a standard which requires conditions, or the
21 adoption or use of one or more practices, means, methods,
22 operations or processes, reasonably necessary to provide safe
23 or healthful employment and places of employment.

24 (9) The term "national consensus standard" means
25 any occupational safety and health standard or modification

1 thereof which (a) has been adopted by a nationally recog-
2 nized public or private standards-producing organization
3 possessing technical competence and under a consensus
4 method which involves consideration of the views of inter-
5 ested and affected parties, and (b) has been designated by
6 the Board, after consultation with other appropriate Federal
7 agencies.

8 (10) The term "establishment" means any distinct,
9 physical place of business.

10 (b) (1) The Board in its discretion may by rule of de-
11 cision or by published rule, decline to assert jurisdiction over
12 any class or category of employers where in the opinion of
13 the Board the effect on commerce of such employer's opera-
14 tion is not sufficiently substantial to warrant the application
15 of this Act.

16 (2) This Act shall not apply with respect to employ-
17 ment performed in a workplace within a foreign country or
18 within territory under the jurisdiction of the United States
19 other than the following: a State; Wake Island; and the
20 Canal Zone.

21 STANDARDS

22 SEC. 4. (a) Except as provided in sections 3 (b), 12
23 and 14 of this Act, each employer engaged in a business
24 affecting commerce shall furnish employment and a place of
25 employment which are safe and healthful as prescribed by

1 occupational safety and health standards promulgated by the
2 National Occupational Safety and Health Board, established
3 by section 5 of this Act. Such standards shall be promulgated,
4 modified, or revoked by the Board by rule in accordance
5 with subsections (b) or (c).

6 (b) Whenever the Board determines that safety and
7 health standards should be prescribed for any trade, craft,
8 occupation, or type of business, industry, workplace, or other
9 work environment for which no standards have previously
10 been prescribed pursuant to this Act, and for which an appli-
11 cable national consensus standard exists, it shall promulgate
12 by rule such applicable national consensus standard, such
13 rule (or subsequent modification thereof) to become effective
14 thirty days after publication in the Federal Register unless
15 within such thirty-day period the Secretary of Labor (with
16 respect to safety issues) or the Secretary of Health, Educa-
17 tion, and Welfare (with respect to health issues) files a
18 written objection together with reasons in support of such
19 objection with the Board in which event such standard shall
20 be promulgated in accordance with subsection (c) of this
21 section. If the Board in its judgment decides that it is neces-
22 sary to modify a national consensus standard it shall give
23 notice to the nationally recognized standards-producing or-
24 ganization which produced such standard and afford the
25 organization a period of sixty days (beginning with the day

1 of receipt of such notice by the organization), or such addi-
2 tional period as the Board may, in its discretion, allow within
3 which to modify such standard in accordance with the con-
4 sensus method of the organization: *Provided*, That if the
5 standards-producing organization fails to modify the national
6 consensus standard within the sixty-day period, the Board
7 may commence proceedings under subsection (c) of this
8 section. If the organization so modifies such standard, the
9 Board shall promulgate by rule such modified national con-
10 sensus standard, such rule to become effective thirty days
11 after publication in the Federal Register, unless within such
12 thirty-day period the Secretary of Labor (with respect to
13 safety issues) or the Secretary of Health, Education, and
14 Welfare (with respect to health issues) files a written objec-
15 tion together with reasons in support of such objection with
16 the Board in which event such standard shall be promulgated
17 in accordance with subsection (c) of this section. Any such
18 standard promulgated pursuant to this subsection shall be
19 known as an "adopted national consensus standard." Sec-
20 tion 553 of title 5, United States Code, shall not apply to
21 this subsection.

22 (c) A rule or regulation to establish or modify an occu-
23 pational safety or health standard other than those which are
24 required to be promulgated or modified in accordance with
25 subsection (b) shall be promulgated, issued, modified, or re-

1 pealed by the Board as enumerated in paragraphs (1), (2),
2 and (3) of this subsection: *Provided*, That prior to the insti-
3 tution of any procedures under this subsection, the Board shall
4 submit to the appropriate national standards-producing or-
5 ganization any proposed standard and afford such organiza-
6 tion reasonable opportunity, not to exceed ninety days un-
7 less extended by the Board, to prepare a report on the tech-
8 nical feasibility, reasonableness and practicality of such stand-
9 ard:

10 (1) Whenever the Board makes a preliminary determi-
11 nation that such a rule should be prescribed, the Board shall
12 schedule and give notice of a hearing. Notice of the time and
13 place of any such hearing shall be published in the Federal
14 Register thirty days prior to the hearing and shall contain
15 either the terms or substance of the proposed rule or a de-
16 scription of the subjects and issues involved. Prior to the
17 hearing interested persons shall be afforded an opportunity
18 to submit written data, views, or arguments. Only persons
19 who have submitted such written data, views, or arguments
20 shall have a right at such hearing to submit oral or written
21 evidence, data, views or arguments.

22 (2) Upon the entire record before it, including any
23 written data, views, and arguments submitted in connection
24 with the hearing, and giving due regard to national consensus

1 standards, if any, the Board may issue a rule promulgating,
2 modifying, or revoking an occupational safety and health
3 standard. The rule shall become effective on the expiration of
4 sixty days after the date of its publication in the Federal
5 Register unless the Secretary of Labor (with respect to
6 safety issues) or the Secretary of Health, Education, and
7 Welfare (with respect to health issues) files a written objec-
8 tion to the rule or any part thereof before the expiration of
9 such period. Such objection shall be accompanied by sug-
10 gested alternative standards and shall state that, based on the
11 record before the Board the rule does not, in the judgment of
12 the Secretary or the Secretary of Health, Education, and
13 Welfare, as the case may be, provide safe and healthful
14 working conditions or is not feasible.

15 (3) If within sixty days of the publication in the Fed-
16 eral Register of the rule the Secretary of Labor (with respect
17 to safety issues) or the Secretary of Health, Education, and
18 Welfare (with respect to health issues) files a written objec-
19 tion, and suggests alternative standards, the rule shall not
20 become effective unless the Board within thirty days after the
21 filing of objections reaffirms or modifies its decision to issue
22 its rule by a majority vote of its five members, and states the
23 reasons for such action. The rule, as finally determined and
24 adopted by the Board shall be published in the Federal
25 Register, to take effect not less than thirty days after publi-

1 tion. Whenever the rule as finally determined and adopted
2 varies from the rule originally proposed by the Board, the
3 Board shall also publish the basis for the new rule.

4 (d) The Secretary of Labor (with respect to safety
5 issues) or the Secretary of Health, Education, and Welfare
6 (with respect to health issues) may submit a request to the
7 Board at any time to establish or modify occupational safety
8 and health standards indicated in the request. Within ninety
9 days from the receipt of the request, the Board shall com-
10 mence proceedings under subsections (b) or (c) of this
11 section to set such standards.

12 (e) If, after the termination of a hearing conducted
13 under subsection (c) of this section and prior to the pub-
14 lication of the rule, an interested person who participated in
15 the hearing before the Board makes application to the Board
16 for leave to adduce additional evidence and such person shows
17 to the satisfaction of the Board that such additional evidence
18 may materially affect the result of the hearing and that there
19 were reasonable grounds for failure to adduce such evidence
20 in the hearing before the Board, the Board may reopen the
21 hearing for the purpose of considering such additional evi-
22 dence.

23 (f) In determining the priority for establishing stand-
24 ards under this section, the Board shall give due regard to

1 the need for mandatory safety and health standards of par-
2 ticular industries, trades, crafts, occupations, businesses,
3 workplaces or work environments. The Board shall also give
4 due regard to the recommendations of the Secretary and the
5 Secretary of Health, Education, and Welfare regarding the
6 need for mandatory standards in determining the priority
7 for establishing such standards.

8 NATIONAL OCCUPATIONAL SAFETY AND HEALTH BOARD

9 SEC. 5. (a) The National Occupational Safety and
10 Health Board is hereby established. The Board shall be
11 composed of five members, at least three of whom shall have
12 a background either by reason of previous training, educa-
13 tion or experience in the field of occupational safety or health,
14 who shall be appointed by the President by and with the
15 consent of the Senate. One of the five members may be
16 designated at any time by the President to serve as Chair-
17 man of the Board.

18 (b) The terms of office of the members of the Board
19 shall be as follows: one member shall be appointed for a
20 term of one year, one member shall be appointed for a term
21 of two years, another for a term of three years, and the
22 two remaining members shall be appointed for periods of
23 four and five years, respectively. Their successors shall be
24 appointed for terms of five years each, except that vacancy
25 caused by death, resignation, or removal of a member prior

1 to the expiration of the term for which he was appointed
2 shall be filled only for the remainder of such unexpired term.

3 A member of the Board may be removed by the President
4 for inefficiency, neglect of duty, or malfeasance in office.

5 (c) Subchapter II (relating to executive schedule pay
6 rates) of chapter 53 of title V of the United States Code is
7 amended as follows:

8 (1) Section 5314 (5 U.S.C. 5314) is amended by
9 adding at the end thereof the following: "(54) Chairman,
10 National Occupational Safety and Health Board."

11 (2) Section 5315 (5 U.S.C. 5315) is amended by
12 adding at the end thereof the following: "(92) Members,
13 National Occupational Safety and Health Board."

14 (d) The principal office of the Board shall be in the
15 District of Columbia. The Board shall have an official seal
16 which shall be judicially noticed and which shall be preserved
17 in the custody of the Secretary of the Board.

18 (e) The Board shall, without regard to the civil service
19 laws, appoint and prescribe the duties of a Secretary of the
20 Board. Subject to the civil service laws, the Board shall
21 appoint such other employees, including hearing examiners,
22 as it deems necessary in exercising its responsibilities. The
23 compensation of all employees appointed by the Board shall
24 be fixed in accordance with chapter 51 and subchapter III
25 of chapter 53 of title 5, United States Code.

1 (f) For the purpose of carrying out its functions under
2 the Act, three members of the Board shall constitute a
3 quorum, and official action can be taken only on the affirma-
4 tive vote of at least three members; but upon the order of the
5 Board a special panel composed of one or more members, or
6 a hearing examiner, shall conduct any hearing provided for
7 in section 4 and submit the transcript of such hearing to the
8 entire Board for its action thereon.

9 (g) The Board is authorized to employ experts and con-
10 sultants or organizations thereof as authorized by section
11 3109 of title 5, United States Code, and allow them while
12 away from their homes or regular places of business, travel
13 expenses (including per diem in lieu of subsistence) as
14 authorized by section 5703 (b) of title 5, United States Code,
15 for persons in the Government service employed intermit-
16 tently, while so employed.

17 (h) To carry out its functions under section 4 and sec-
18 tion 7 (a) the Board is authorized to issue subpoenas for the
19 attendance and testimony of witnesses and the production of
20 relevant papers, books, and documents and administer oaths.
21 Witnesses summoned before the Board shall be paid the same
22 fees and mileage that are paid witnesses in the courts of the
23 United States.

24 (i) The Board may order testimony to be taken by

1 deposition in any proceeding pending before it at any stage
2 of such proceeding. Reasonable notice must first be given in
3 writing by the Board or by the party or his attorney of
4 record, which notice shall state the name of the witness and
5 the time and place of the taking of his deposition. Any per-
6 son may be compelled to appear and depose, and to produce
7 books, papers, or documents, in the same manner as wit-
8 nesses may be compelled to appear and testify and produce
9 like documentary evidence before the Board, as provided in
10 subsection (j) of this section. Witnesses whose depositions
11 are taken under this subsection, and the persons taking such
12 depositions, shall be entitled to the same fees as are paid
13 for like services in the courts of the United States.

14 (j) In the case of contumacy by, or refusal to obey a
15 subpoena served upon any person under this subsection, the
16 Federal district court for any district in which such person
17 is found or resides or transacts business, upon application by
18 the United States, and after notice to such person and hear-
19 ing, shall have jurisdiction to issue an order requiring such
20 person to appear and produce documents before the Board,
21 or both; and any failure to obey such order of the court may
22 be punished by such court as a contempt thereof.

23 (k) The Board is authorized to make such rules as are
24 necessary for the orderly transaction of its proceedings.

DUTIES OF THE SECRETARY

INSPECTIONS AND INVESTIGATIONS

SEC. 6. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter upon at reasonable times any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer or on a contract described in section 11 (a) ; and

(2) to question any such employee and to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any such area, workplace, or environment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein.

(b) For the purpose of carrying out his duties under this Act the Secretary may delegate his authority under this section to any agency of the Federal Government with or without reimbursement and with its consent and to any State agency or agencies designated by the Governor of the State and with or without reimbursement and under conditions agreed upon by the Secretary and such State agency or agencies.

ADMINISTRATIVE ENFORCEMENT

1
2 SEC. 7. (a) (1) If, upon inspection or investigation,
3 the Secretary within his discretion determines that there is
4 reasonable cause to believe that an employer has violated the
5 standards promulgated under section 4 or that any person has
6 violated any regulation prescribed under subsection (b) of
7 this section or any contractual requirement of section 11 (a) ,
8 he may petition the Board for a hearing to determine if a
9 violation has occurred. The Board shall hold a hearing (in
10 accordance with section 554 of title 5, United States Code,
11 but without regard to subsection (a) (3) of such section) ,
12 and shall issue such orders, and make such decisions, based
13 upon findings of fact, as are deemed to be necessary to en-
14 force such standards, regulations, or requirements: *Provided*,
15 That no employer shall be found to have violated the stand-
16 ards under this Act if he demonstrates by a preponderance of
17 the evidence that he has provided safe and healthful working
18 conditions which are substantially equal to those required to
19 be maintained pursuant to the applicable standards under this
20 Act. The Board shall give any person who is alleged to have
21 violated the standards promulgated under section 4, the in-
22 formation required by section 554 (b) of title 5, at least
23 fifteen days prior to hearing.

24 (2) In making his inspections and investigations under

1 this Act the Secretary may require the attendance and testi-
2 mony of witnesses and the production of evidence under oath.
3 Witnesses shall be paid the same fees and mileage that are
4 paid witnesses in the courts of the United States. In case of
5 contumacy, failure, or refusal of any person to obey such an
6 order, any district court of the United States or the United
7 States courts of any territory or possession, within the juris-
8 diction of which such person is found, or resides or transacts
9 business, upon the application by the Secretary, shall have
10 jurisdiction to issue to such person an order requiring such
11 person an order requiring such person to appear to produce
12 evidence if, as, and when so ordered, and to give testimony
13 relating to the matter under investigation or in question; and
14 any failure to obey such order of the court may be punished
15 by said court as a contempt thereof.

16 (b) Each employer shall make, keep, and preserve for
17 such period of time, and make available to the Secretary such
18 records concerning the implementation of section 4 of this
19 Act as the Secretary shall prescribe by regulation as may be
20 necessary to carry out his functions under this Act. On the
21 basis of such records, employers shall file such reports with
22 the Secretary as he shall prescribe by regulation, as necessary
23 to carry out his functions under this Act. In prescribing regu-
24 lations under this section, the Secretary shall consult with the
25 States in order to minimize or eliminate separate record keep-

1 ing or reporting requirements and to avoid duplication of
2 effort.

3 JUDICIAL PROCEEDINGS

4 SEC. 8. (a) The Secretary shall have power, upon issu-
5 ance of an order under section 7 (a) (1), to petition any
6 United States district court within any district wherein a vio-
7 lation of the Act is alleged to have occurred or wherein the
8 employer has its principal office, for appropriate relief. The
9 district courts of the United States shall have jurisdiction to
10 enforce (by restraining order, injunction, or otherwise) any
11 order of the Board under section 7 (a) (1) of this Act. The
12 Secretary or any other person adversely affected or aggrieved
13 by an order of the Board issued under section 7 (a) (1) of
14 this Act may obtain review of such order by the United States
15 district court for the district wherein the violation is alleged to
16 have occurred or wherein the employer has its principal office
17 by filing in such court within thirty days following the issu-
18 ance of such order a petition praying that the action of the
19 Board be modified or set aside in whole or in part. A petition
20 for review by the court shall not stay an order of the Board
21 under section 7 (a) (1) unless otherwise provided by the
22 court.

23 (b) If, upon inspection or investigation, the Secretary
24 within his discretion determines (A) that there is reasonable
25 cause to believe an employer has violated any standard

1 promulgated under section 4 or that any person has violated
2 a contractual requirement of section 11 (a) and (B) that
3 conditions or practices in such places of employment are
4 such that a danger exists which could reasonably be expected
5 to cause death or serious physical harm immediately or
6 before the imminence of such danger can be eliminated, the
7 Secretary may petition any United States district court,
8 within any district wherein such violation is alleged to have
9 occurred, or wherein the employer has its principal office for
10 injunctive relief or a temporary restraining order. Upon the
11 filing of any such petition the district court shall have juris-
12 diction to grant such injunctive relief or temporary restrain-
13 ing order as it deems just and proper, notwithstanding any
14 other provision of law: *Provided*, That no temporary re-
15 straining order shall be issued without notice unless a petition
16 alleges that substantial and irreparable injury will be un-
17 avoidable and such temporary restraining order shall be
18 effective for no longer than five days and will become void
19 at the expiration of such period: *Provided further*, That the
20 Secretary may obtain appropriate injunctive relief following
21 the expiration of a five-day restraining order pending the
22 outcome of a proceeding under section 7 (a) (1) of this Act
23 begun during the five day period of the temporary restrain-
24 ing order. Upon filing of any petition for preliminary in-
25 junction the courts shall cause notice thereof to be served

1 upon the employer, who shall be given an opportunity to
2 appear by counsel and present any relevant testimony.

3 (c) Except as provided in section 518 (a) of title 28,
4 United States Code, relating to litigation before the Supreme
5 Court and the Court of Claims, the Solicitor of Labor may
6 appear for and represent the Secretary and the Board in
7 any civil litigation brought under this Act but all such liti-
8 gation shall be subject to the direction and control of the
9 Attorney General: *Provided*, That in any appeal of any
10 action of the Board brought by the Secretary under section
11 8 (a), the Solicitor shall represent the Secretary; the Attor-
12 ney General shall represent the Board in such proceedings.

13 (d) In any case where an injunction or temporary re-
14 straining order is obtained pursuant to subsection (b) of
15 this section by the Secretary, the court which grants such
16 relief shall set a sum which it deems proper for the payment
17 of such costs, damages, and attorney's fees as may be in-
18 curred or suffered by any party who is found to have been
19 wrongfully restrained or enjoined. In no case shall any party
20 wrongfully restrained or enjoined be entitled to a recovery
21 for costs, damages, and attorney's fees in excess of the sum
22 set by the court.

23 (e) Any interested person affected by the action of the
24 Board in issuing a standard under section 4 may obtain re-

1 view of such action by the United States Court of Appeals
2 for the District of Columbia by filing in such court within
3 thirty days following the publication of such rule a petition
4 praying that the action of the Board be modified or set aside
5 in whole or in part. A copy of such petition shall forthwith
6 be served upon the Board, and thereupon the Board shall
7 certify and file in the court the record upon which the action
8 complained of was issued as provided in section 2112 of
9 title 28, United States Code. Findings of fact by the Board,
10 if supported by substantial evidence on the record as a whole,
11 shall be conclusive: but the court, for good cause shown, may
12 remand the case to the Board to take further evidence, and
13 the Board may thereupon make new or modified findings of
14 fact and may modify its previous action and shall certify to
15 the court the record of the further proceedings. Such new or
16 modified findings of fact shall likewise be conclusive if sup-
17 ported by substantial evidence on the record considered as a
18 whole. The remedy provided by this subsection for reviewing
19 a standard shall be exclusive. The judgment of the court shall
20 be subject to review by the Supreme Court of the United
21 States upon certiorari or certification as provided in section
22 1254 of title 28, United States Code. The commencement of
23 a proceeding under this subsection shall not, unless specifi-

1 cally ordered by the court, delay the application of the
2 Board's standards.

3 INADMISSIBILITY AS EVIDENCE; CONFIDENTIALITY OF
4 TRADE SECRETS

5 SEC. 9. (a) No record or determination of any admin-
6 istrative proceeding under this Act or any statement or
7 report of any kind obtained or received in connection with
8 an investigation under, or the administration or enforcement
9 of, the provisions of this Act shall be made available to any
10 third party or admitted or used as evidence in any civil
11 action other than an action for enforcement or review under
12 this Act nor shall the Secretary or any representative of the
13 Secretary be required by compulsory process to testify as
14 an expert in any civil action growing out of any matter men-
15 tioned in such record, determination, statement, or report,
16 except this subsection shall not be construed to bar the use
17 of compulsory process in requiring any representative of the
18 Secretary to testify on matters otherwise within his personal
19 knowledge concerning the facts involved in such civil action.

20 (b) In connection with any inspection or proceeding
21 under this Act no witness or any other person shall be re-
22 quired or permitted to divulge trade secrets or secret proc-

1 esses except as authorized by the person who owns such
2 secrets or processes.

3 **PENALTIES**

4 SEC. 10. (a) Any person who forcibly assaults, resists,
5 opposes, impedes, intimidates, or interferes with any person
6 while engaged in or on account of the performance of inspec-
7 tions or investigatory duties under this Act shall be fined
8 not more than \$5,000 or imprisoned not more than three
9 years, or both. Whoever, in the commission of any such acts,
10 uses a deadly or dangerous weapon, shall be fined not more
11 than \$10,000 or imprisoned not more than ten years, or both.
12 Whoever kills any person while engaged in or on account
13 of the performance of inspecting or investigating duties under
14 this Act shall be punished by imprisonment for any term
15 of years or for life.

16 (b) (1) Any person who makes a false statement or
17 representation of a material fact, knowing it to be false, or
18 who knowingly fails to disclose a material fact, in any docu-
19 ment, report, or other information required under the pro-
20 visions of section 7 (b), shall be fined not more than \$10,000
21 or imprisoned for not more than one year, or both.

22 (2) Any person who willfully makes a false entry in or
23 willfully conceals, withholds, or destroys any books, records,
24 or statements required under the provisions of section 7 (b)

1 shall be fined not more than \$10,000 or imprisoned for not
2 more than one year, or both.

3 (c) Any employer who willfully violates any standards
4 promulgated under section 4 of this Act may be assessed by
5 the Board, pursuant to an order issued under section 7 (a)
6 (1) of this Act, a civil penalty of not more than \$10,000
7 for each violation. In assessing the penalty, consideration
8 shall be given to the appropriateness of the penalty to the
9 size of the business of the person charged and the gravity of
10 the violation.

11 GOVERNMENT CONTRACTS

12 SEC. 11. (a) Each contract exceeding \$2,500 and re-
13 quiring or involving the employment of any person (1) to
14 which the United States or any agency or instrumentality
15 thereof, or the District of Columbia is a party, (2) which is
16 made for or on behalf of the United States, any agency or
17 instrumentality thereof, or the District of Columbia, or (3)
18 which is financed in whole or in part by loans or grants from,
19 or loans insured or guaranteed by, the United States or any
20 agency or instrumentality of the United States, shall include
21 the requirement that no part of such contract (or any sub-
22 contract thereunder) will be performed in any place or under
23 any condition which does not meet the applicable occupa-
24 tional safety and health standards. The applicable occupa-

1 tional safety and health standards shall be the standards
2 under section 4 of this Act, except that, to the extent that the
3 contract will be performed in a State in which there is in
4 effect a State plan approved under section 14 which provides
5 for the development of safety and health standards relating to
6 one or more occupational safety or health issues, the appli-
7 cable occupational safety and health standards relating to
8 such issues shall be those developed under the State plan
9 rather than those under section 4.

10 (b) In addition to the remedies otherwise provided in
11 this Act, the Board may declare ineligible to receive for
12 such period of time as the Board may prescribe, up to three
13 years, any contract of a type described in subsection (a) of
14 this section (whether or not the contract exceeds \$2,500)
15 any person or firm, or any firm, corporation, partnership, or
16 association in which such person or firm has a controlling in-
17 terest, which is found to have violated the requirements
18 under this Act. No such contract shall be awarded during
19 such period to such person or firm, or to any firm, corpora-
20 tion, partnership or association in which such person or firm
21 has a controlling interest. For the purpose of carrying out
22 the provisions of this subsection the Board shall distribute
23 a list to all agencies of the United States containing the

1 names of persons or firms declared ineligible to receive such
2 contracts and the periods of ineligibility.

3 (c) In addition to the remedies otherwise provided in
4 this Act, the Board may recommend to the appropriate con-
5 tracting agency that such agency cancel, terminate, suspend,
6 or cause to be canceled, or suspended, any contract made by
7 any contracting agency for the failure of the contractor to
8 comply with an order of the Board issued under section 7

9 (a) (1) of this Act for the breach or violation by such em-
10 ployer of the requirements under subsection (a) of this
11 section.

12 VARIATIONS, TOLERANCES, AND EXEMPTIONS

13 SEC. 12. The Board, on the record, after notice and
14 opportunity for hearing, may provide such reasonable limi-
15 tations and may make such rules and regulations allowing
16 reasonable variations, tolerances, and exemptions to and from
17 any or all of the provisions under this Act as it may find
18 advisable and proper in the public interest or to avoid serious
19 impairment of the conduct of Government business. The
20 Board shall keep an appropriately indexed record of all
21 variations, tolerances, and exemptions granted under this sec-
22 tion, which shall be open for public inspection.

1 (c) Any State which, at any time, desires to assume
2 responsibility for development and enforcement in such
3 State of occupational safety or health standards relating to
4 any occupational safety or health issue with respect to
5 which a Federal standard has been promulgated under sec-
6 tion 4 shall submit a State plan for the development of
7 such standards and their enforcement.

8 (d) The Secretary, after consultation with the Secre-
9 tary of Health, Education, and Welfare, shall approve the
10 plan submitted by a State under subsection (c), or any
11 modification thereof, if such plan—

12 (1) designates a State agency or agencies as the
13 agency or agencies responsible for administering the plan
14 throughout the State;

15 (2) provides for the development and enforcement
16 of safety and health standards relating to one or more
17 safety or health issues, which standards and their en-
18 forcement are or will be substantially as effective in pro-
19 viding safe and healthful employment and places of em-
20 ployment as provided in this Act;

21 (3) provides for the right of entry and inspection of
22 all workplaces subject to the Act;

23 (4) contains assurances that such agency or agen-

1 cies have or will have the legal authority and qualified
2 personnel necessary for the enforcement of such stand-
3 ards;

4 (5) gives assurances that such State will devote ade-
5 quate funds to the administration and enforcement of
6 such standards; and

7 (6) provides that the State agency will make
8 such reports to the Secretary in such form and contain-
9 ing such information, as the Secretary shall from time
10 to time require.

11 (e) The Secretary shall, on the basis of reports sub-
12 mitted by the State agency and his own inspections, make a
13 continuing evaluation of the manner in which each State hav-
14 ing a plan approved under this section is carrying out such
15 plan. Whenever the Secretary finds, after affording due no-
16 tice and opportunity for a hearing, that in the administration
17 of the State plan there is a failure to comply substantially
18 with any provision of the State plan (or any assurance con-
19 tained therein), he shall notify the State agency of his with-
20 drawal of approval of such plan and upon receipt of such
21 notice such plan shall cease to be in effect.

22 (f) The State may obtain a review of a decision of the
23 Secretary withdrawing approval of or rejecting its plan by
24 the United States court of appeals for the circuit in which
25 the State is located by filing in such court within thirty days

1 following receipt of notice of such decision a petition praying
2 that the action of the Secretary be modified or set aside in
3 whole or in part. A copy of such petition shall forthwith be
4 served upon the Secretary, and thereupon the Secretary
5 shall certify and file in the court the record upon which the
6 decision complained of was issued as provided in section
7 2112 of title 28, United States Code. Unless the court finds
8 that the Secretary's decision in rejecting a proposed State
9 plan or withdrawing his approval of such a plan to be arbitrary and capricious, the court shall affirm the Secretary's
10 decision. The judgment of the court shall be subject to review
11 by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title
12 28, United States Code.

15 (g) After the Secretary approves a State plan submitted under subsection (c), he may, but shall not be required
16 to, exercise his authority with respect to standards promulgated under section 4 of the Act until he determines, no
17 later than three years after the plan's approval under subsection (d), that, on the basis of actual operations under
18 the State plan, the State meets the criteria set forth in such
19 subsection. Upon making such determination, the provisions
20 of sections 6, 7 (other than 7(b)), and 8 (other than
21 section 8(e)) relating to judicial review of standards issued

1 by the Board), and standards promulgated under section 4.
2 shall not apply with respect to any occupational safety or
3 health issues covered under the plan: *Provided*, That nothing
4 in this subsection shall prevent the Secretary from making
5 inspections at any time for the sole purpose of conducting
6 the continuing evaluation provided for in subsection (e) of
7 this section.

8 RELATIONSHIP TO OTHER FEDERAL PROGRAMS

9 SEC. 15. Nothing in this Act shall authorize the Board
10 or the Secretary to regulate, or shall apply to, working con-
11 ditions of employees with respect to whom other Federal
12 agencies, and State agencies acting under section 274 of
13 the Atomic Energy Act of 1954, as amended (42 U.S.C.
14 2021) have statutory authority to prescribe or enforce stand-
15 ards or regulations affecting occupational safety or health.

16 FEDERAL AGENCY SAFETY PROGRAMS AND

17 RESPONSIBILITIES

18 SEC. 16. (a) It shall be the responsibility of the head
19 of each Federal agency to establish and maintain an effective
20 and comprehensive occupational safety and health program
21 which is consistent with the standards promulgated by the
22 Board under section 4. The head of each agency shall (after
23 consultation with authorized representatives of the employees
24 thereof) —

25 (1) provide safe and healthful places and condi-

1 tions of employment, consistent with the standards set
2 under section 4;

3 (2) acquire, maintain, and require the use of safety
4 equipment, personal protective equipment, and devices
5 reasonably necessary to protect employees;

6 (3) keep adequate records of all occupational acci-
7 dents and illnesses for proper evaluation and necessary
8 corrective action; and

9 (4) make an annual report to the President with
10 respect to occupational accidents and injuries and the
11 agency's program under this section. Such report shall
12 include any report submitted under section 7902 (e) (2)
13 of title 5, United States Code.

14 (b) The President shall transmit annually to the Sen-
15 ate and House of Representatives a report of the activities of
16 each Federal agency under this section.

17 HEALTH RESEARCH AND RELATED ACTIVITIES

18 SEC. 17. (a) (1) The Secretary of Health, Education,
19 and Welfare, after consultation with the Board and the Sec-
20 retary, and with other appropriate Federal departments or
21 agencies, shall conduct (directly or by grants or contracts)
22 research, experiments, and demonstrations relating to occu-
23 pational safety and health.

24 (2) The Secretary of Health, Education, and Welfare
25 shall from time to time consult with the Board in order to

1 develop specific plans for such research, demonstrations, and
2 experiments as are necessary to produce criteria enabling the
3 Board to meet its responsibility for the formulation of safety
4 and health standards under this Act; and the Secretary of
5 Health, Education, and Welfare, on the basis of such re-
6 search, demonstrations, and experiments and any other in-
7 formation available to him, shall develop such criteria.

8 (3) The Secretary of Health, Education, and Welfare
9 shall also conduct special research, experiments, and demon-
10 strations relating to occupational safety and health as are
11 necessary to explore new problems, including those created
12 by new technology in occupational safety and health, which
13 may require ameliorative action beyond that which is other-
14 wise provided for in the operating provisions of this Act. The
15 Secretary of Health, Education, and Welfare shall also con-
16 duct research into the motivational and behavioral factors re-
17 lating to the field of occupational safety and health.

18 (b) The Secretary of Health, Education, and Welfare is
19 authorized after presenting written notice to make inspections
20 as provided in section 6 of this Act in order to carry out his
21 functions and responsibilities under this section.

22 (c) The Secretary is authorized to enter into contracts,
23 agreements, or other arrangements with appropriate public
24 agencies or private organizations for the purpose of conduct-
25 ing studies relating to his responsibilities under this Act.

1 In order to avoid any duplication of efforts under this section
2 the Secretary shall consult with the Secretary of Health,
3 Education, and Welfare.

4 (d) Within two years after the effective date of this
5 Act, the Secretary of Health, Education, and Welfare, in
6 consultation with the Secretary and the Board, shall complete
7 a comprehensive study and evaluation of occupational health
8 problems and transmit a report, including recommendations
9 thereon, to the President and to the Congress.

10 TRAINING AND EMPLOYEE EDUCATION

11 SEC. 18. (a) The Secretary of Health, Education, and
12 Welfare, after consultation with the Secretary of Labor and
13 with other appropriate Federal departments and agencies,
14 shall conduct, directly or by grants or contracts, (1) educa-
15 tion programs to provide an adequate supply of qualified
16 personnel to carry out the purposes of this Act, and (2)
17 informational programs on the importance of and proper use
18 of adequate safety equipment.

19 (b) The Secretary is also authorized to conduct (directly
20 or by grants or contracts) short-term training of personnel
21 engaged in work related to his responsibilities under this
22 Act.

23 (c) In order to encourage labor and management to
24 promote occupational safety and health, the Secretary shall
25 provide technical assistance to labor and management relat-

1 ing to the promotion of sound safety and health programs
2 and practices.

3 (d) In consultation with the Secretary of Health, Edu-
4 cation, and Welfare, the Secretary shall provide for the es-
5 tablishment and supervision of programs for the education
6 and training of employers and employees in the recognition,
7 avoidance, and prevention of unsafe or unhealthful working
8 conditions in employments covered by this Act, and to con-
9 sult with and advise employers as to effective means of pre-
10 venting occupational injuries and illnesses.

11 ADMINISTRATION: NATIONAL ADVISORY COMMITTEE

12 SEC. 19. (a) In carrying out his responsibilities under
13 this Act, the Secretary is authorized to—

14 (1) use, with the consent of any Federal agency,
15 the services, facilities, and employees of such agency
16 with or without reimbursement, and with the consent
17 of any State or political subdivision thereof, accept and
18 use the services, facilities, and employees of the agencies
19 of such State or subdivision with or without reimburse-
20 ment; and

21 (2) employ experts and consultants or organiza-
22 tions thereof as authorized by section 3109 of title 5,
23 United States Code, and allow them while away from
24 their homes or regular places of business, travel expenses
25 (including per diem in lieu of subsistence) as authorized

1 by section 5703 (b) of title 5, United States Code, for
2 persons in the Government service employed intermit-
3 tently, while so employed.

4 (b) (1) There is hereby established a National Ad-
5 visory Committee on Occupational Safety and Health (here-
6 after in this subsection referred to as the "Committee")
7 consisting of twelve members appointed by the Secretary,
8 four of whom are to be designated by the Secretary of Health,
9 Education, and Welfare, without regard to the civil service
10 laws and composed equally of representatives of manage-
11 ment, labor and the public. The Secretary shall designate
12 one of the public members as Chairman. The members shall
13 be selected upon the basis of their experience and competence
14 in the field of occupational safety and health.

15 (2) The Committee shall advise, consult with, and make
16 recommendations to the Secretary and the Secretary of
17 Health, Education, and Welfare on matters relating to the
18 administration of the Act. The Committee shall hold no
19 fewer than two meetings during each calendar year.

20 (3) The members of the Committee shall be compen-
21 sated in accordance with the provisions of subsection (a) (2)
22 of this section.

23 (4) The Secretary shall furnish to the Committee an
24 executive secretary and such secretarial, clerical, and other

1 services as are deemed necessary to the conduct of its
2 business.

3 GRANTS TO THE STATES

4 SEC. 20. (a) The Secretary is authorized, during the
5 fiscal year ending June 30, 1971, and the two succeeding
6 fiscal years, to make grants to the States to assist them (1)
7 in identifying their needs and responsibilities in the area
8 of occupational safety and health, (2) in developing State
9 plans under section 14, or (3) in developing plans for—

10 (1) establishing systems for the collection of in-
11 formation concerning the nature and frequency of
12 occupational injuries and diseases;

13 (2) increasing the expertise and enforcement cap-
14 abilities of their personnel engaged in occupational safety
15 and health programs; or

16 (3) otherwise improving the administration and en-
17 forcement of State occupational safety and health laws,
18 including standards thereunder, consistent with the ob-
19 jectives of this Act.

20 (b) The Secretary is authorized, during the fiscal year
21 ending June 30, 1971, and the two succeeding fiscal years,
22 to make grants to the States for experimental and demon-
23 stration projects consistent with the objectives set forth in
24 subsection (a) of this section.

25 (c) For receipt of any grant made by the Secretary

1 under this section, the Governor of the State shall designate
2 the appropriate State agency, or agencies.

3 (d) Any State agency, or agencies, designated by the
4 Governor of the State, desiring a grant under this section
5 shall submit an application therefor to the Secretary.

6 (e) The Secretary shall review the application, and
7 shall, after consultation with the Secretary of Health, Edu-
8 cation, and Welfare, approve or reject such application.

9 (f) The Federal share for each State grant under sub-
10 section (a) or (b) of this section may be up to 90 per
11 centum of the State's total cost.

12 (g) The Secretary is authorized to make grants to the
13 States to assist them in administering and enforcing programs
14 for occupational safety and health contained in State plans
15 approved by the Secretary pursuant to section 14 of this Act.
16 The Federal share for each State grant under this subsection
17 may be up to 50 per centum of the State's total cost.

18 (h) Prior to June 30, 1972, the Secretary shall, after
19 consultation with the Secretary of Health, Education, and
20 Welfare, transmit a report to the President and to Congress,
21 describing the experience under the program and making
22 any recommendations as he may deem appropriate.

23 EFFECT ON OTHER LAWS

24 SEC. 21. (a) Except as provided in subsection (c) of
25 this section nothing in this Act shall be construed as re-

1 pealing or modifying in any way any other Federal laws
2 prescribing safety and health requirements.

3 (b) Nothing in this Act shall be construed or held to
4 supersede or in any manner affect the functions or authority
5 of the Secretary of Health, Education, and Welfare under
6 any other law, or to affect any workmen's compensation
7 law or to enlarge or diminish or affect in any other manner
8 the common law or statutory right, duties, or liabilities of
9 employers and employees under any law with respect to
10 injuries, occupational or other diseases, or death of employees
11 arising out of, or in the course of employment.

12 (c) The safety and health standards promulgated under
13 the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et
14 seq.), the Service Contract Act (41 U.S.C. 351 et seq.), and
15 the National Foundation on Arts and Humanities Act (20
16 U.S.C. 951 et seq.), are deemed repealed and rescinded on
17 the effective date of corresponding standards promulgated
18 under this Act, as determined by the Secretary of Labor to
19 be corresponding standards. The safety and health provisions
20 of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et
21 seq.), the Service Contract Act (41 U.S.C. 351 et seq.),
22 and the National Foundation on Arts and Humanities Act
23 (20 U.S.C. 951 et seq.), are deemed repealed and rescinded
24 effective July 1, 1975.

AUDITS

1

2 SEC. 22. (a) Each recipient of a grant under this Act
3 shall keep such records as the Secretary shall prescribe, in-
4 cluding records which fully disclose the amount and disposi-
5 tion by such recipient of the proceeds of such grants, the total
6 cost of the project or undertaking in connection with which
7 such grant is made or used, and the amount of that portion
8 of the cost of the project or undertaking supplied by other
9 sources, and such other records as will facilitate an effective
10 audit.

11 (b) The Secretary and the Comptroller General of the
12 United States, or any of their duly authorized representa-
13 tives, shall have access for the purpose of audit and examina-
14 tion to any books, documents, papers, and records of the re-
15 cipients of any grant under this Act that are pertinent to any
16 such grant.

REPORTS

17

18 SEC. 23. Within one hundred and twenty days following
19 the convening of the first session of each Congress, the Sec-
20 retary, the Board, and the Secretary of Health, Education,
21 and Welfare shall prepare and submit to the President for
22 transmittal to the Congress biennial reports upon the sub-
23 ject matter of this Act, the progress concerning the achieve-
24 ment of its purposes, the needs and requirements in the field

1 of occupational safety and health, and any other relevant
2 information, and including any recommendations they may
3 deem appropriate.

4 **APPROPRIATIONS**

5 SEC. 24. There are hereby authorized to be appropriated
6 such sums as may be necessary to carry out the purposes of
7 this Act.

8 **SEPARABILITY**

9 SEC. 25. If any provision of this Act, or the application
10 of such provision to any person or circumstance, shall be held
11 invalid, the remainder of this Act, or the application of such
12 provision to persons or circumstances other than those as to
13 which it is held invalid, shall not be affected thereby.

91st CONGRESS
2d Session

S. 4404

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 1970

Mr. DOMINICK introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To assure safe and healthful working conditions for working men and women; by providing the means and procedures for establishing and enforcing mandatory safety and health standards; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That this Act may be cited as the "Occupational Safety and*
- 4 *Health Act".*

1 CONGRESSIONAL FINDINGS AND PURPOSE

2 SEC. 2. (a) The Congress finds that personal injuries
3 and illnesses arising out of work situations impose a substan-
4 tial burden upon, and are a hindrance to, interstate commerce
5 in terms of lost production, wage loss, medical expenses, and
6 **disability compensation payments.**

7 (b) The Congress declares it to be its purpose and
8 policy, through the exercise of its powers, to regulate com-
9 merce among the several States and with foreign nations and
10 to provide for the general welfare, to assure so far as
11 possible every working man and woman in the Nation safe
12 and healthful working conditions and to preserve our human
13 resources—

14 (1) by encouraging employers and employees in
15 their efforts to reduce the number of occupational safety
16 and health hazards at their places of employment, and
17 to stimulate employers and employees to institute new
18 and to perfect existing programs for providing safe and
19 **healthful working conditions;**

20 (2) by providing that employers and employees
21 have separate but dependent responsibilities and rights
22 with respect to achieving safe and healthful working
23 **conditions;**

24 (3) by creating a National Occupational Safety
25 and Health Board to be appointed by the President for

1 the purpose of setting mandatory occupational safety
2 and health standards applicable to businesses affecting
3 interstate commerce, and by creating an Occupational
4 Safety and Health Appeals Commission for carrying out
5 adjudicatory functions under the Act;

6 (4) by building upon advances already made
7 through employer and employee initiative for providing
8 safe and healthful working conditions;

9 (5) by providing for research in the field of occu-
10 pational safety and health, including the psychological
11 factors involved, and by developing innovative methods,
12 techniques, and approaches for dealing with occupational
13 safety and health problems;

14 (6) by exploring ways to discover latent diseases,
15 establishing causal connections between diseases and
16 work in environmental conditions, and conducting other
17 research relating to health problems, in recognition of
18 the fact that occupational health standards present prob-
19 lems often different from those involved in occupational
20 safety;

21 (7) by providing medical criteria which will assure
22 insofar as practicable that no employee will suffer
23 diminished health, functional capacity, or life expectancy
24 as a result of his work experience;

25 (8) by providing for training programs to increase

1 the number and competence of personnel engaged in the
2 field of occupational safety and health;

3 (9) by providing for the development and promul-
4 gation of occupational safety and health standards;

5 (10) by providing an effective enforcement pro-
6 gram which shall include a prohibition against giving
7 advance notice of any inspection and sanctions for any
8 individual violating this prohibition;

9 (11) by encouraging the States to assume the fullest
10 responsibility for the administration and enforcement of
11 their occupational safety and health laws by providing
12 grants to the States to assist in identifying their needs and
13 responsibilities in the area of occupational safety and
14 health, to develop plans in accordance with the provisions
15 of this Act, to improve the administration and enforce-
16 ment of State occupational safety and health laws, and
17 to conduct experimental and demonstration projects in
18 connection therewith;

19 (12) by providing for appropriate reporting pro-
20 cedures with respect to occupational safety and health
21 which procedures will help achieve the objectives of this
22 Act and accurately describe the nature of the occupa-
23 tional safety and health problem;

24 (13) by encouraging joint labor-management efforts
25 to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term “Secretary” means the Secretary of Labor.

(2) The term “Safety and Health Appeals Commission” means the Occupational Safety and Health Appeals Commission established under section 12 of this Act.

(3) The term “Board” means the National Occupational Safety and Health Board established under section 8 of this Act.

(4) The term “commerce” means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than a State as defined in paragraph (8) of this subsection), or between points in the same State but through a point outside thereof.

(5) The term “person” means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(6) The term “employer” means a person engaged in a business affecting commerce who has employees,

1 but does not include the United States or any State or
2 political subdivision of a State.

3 (7) The term "employee" means an employee of
4 an employer who is employed in a business of his em-
5 ployer which affects commerce.

6 (8) The term "State" includes a State of the United
7 States, the District of Columbia, Puerto Rico, the Virgin
8 Islands, American Samoa, Guam, and the Trust Terri-
9 tory of the Pacific Islands.

10 (9) The term "occupational safety and health
11 standard" means a standard which requires conditions,
12 or the adoption or use of one or more practices, means,
13 methods, operations, or processes, reasonably necessary
14 or appropriate to provide safe or healthful employment
15 and places of employment.

16 (10) The term "national consensus standard" means
17 any occupational safety and health standard or modi-
18 fication thereof which (a) has been adopted and promul-
19 gated by a nationally recognized public or private
20 standards-producing organization possessing technical
21 competence and under a consensus method which in-
22 volves consideration of the views of interested and af-
23 fected parties and (b) has been designated by the Board,
24 after consultation with other appropriate Federal
25 agencies.

(11) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.

APPLICABILITY OF ACT

SEC. 4. This Act shall apply only with respect to employment performed in a workplace in a State, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, or the Canal Zone, except that this Act shall not apply to any vessel underway on the Outer Continental Shelf lands. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no Federal district courts having jurisdiction.

DUTIES OF EMPLOYERS

SEC. 5. Each employer—

(a) shall furnish to each of his employees employment and a place of employment which are free from any hazards which are readily apparent and are causing or are likely to cause death or serious physical harm to his employees;

(b) shall comply with occupational safety and health standards promulgated under this Act.

1 OCCUPATIONAL SAFETY AND HEALTH STANDARDS

2 SEC. 6. (a) The National Occupational Safety and
3 Health Board established under section 8 of this Act is au-
4 thorized to promulgate rules prescribing occupational safety
5 and health standards in accordance with sections 556 and
6 557 of title 5, United States Code.

7 (b) Without regard to the provisions of sections 553,
8 556, and 557, title 5, United States Code, the Board shall,
9 as soon as practicable, but in no event later than three years
10 after the date of enactment of this Act, by rule promulgate
11 as an occupational safety and health standard, any national
12 consensus standard or any established Federal standard, un-
13 less it determines that the promulgation of such a standard
14 as an occupational safety and health standard would not
15 result in improved safety or health for affected employees.
16 In the event of conflict among such standards, the Board
17 shall promulgate the standard which assures the greatest pro-
18 tection of the safety or health of the affected employees.
19 Such national consensus standard or established Federal
20 standard shall take effect immediately upon publication and
21 remain in effect until superseded by a rule promulgated
22 pursuant to subsection (a) of this section.

23 (c) (1) Whenever the Board promulgates any stand-
24 ard, makes any rule, order, decision, grants any exemption
25 or extension of time, it shall include a statement of the

1 reasons for such action, and such statement shall be pub-
2 lished in the Federal Register; and

3 (2) Whenever a rule issued by the Board differs sub-
4 stantially from an existing national consensus standard, the
5 Board shall include in the rule issued a statement of the
6 reasons why the rule as adopted will better effectuate the
7 purposes of this Act than the national consensus standard.

8 (d) Any agency may participate in the rulemaking
9 under this section.

10 (e) The Secretary of Labor (with respect to safety
11 issues) or the Secretary of Health, Education, and Welfare
12 (with respect to health issues) may submit a request to the
13 Board at any time to establish or modify occupational safety
14 and health standards indicated in the request. Within sixty
15 days from the receipt of the request, the Board shall com-
16 mence proceedings under this section.

17 (f) Any interested person may also submit a request
18 in writing to the Board at any time to establish or modify
19 occupational safety and health standards. The Board shall
20 give due consideration to such request and may commence
21 proceedings under this section on the basis of such request.

22 (g) If, prior to the publication of the rule, an interested
23 person or agency which submitted written data, views, or
24 arguments makes application to the Board for leave to adduce

1 additional data, views, or arguments and such person or
2 agency shows to the satisfaction of the Board that additions
3 may materially affect the result of the rulemaking procedure
4 and that there were reasonable grounds for failure to adduce
5 such additions earlier, the Board may receive and consider
6 such additions.

7 (h) In determining the priority for establishing stand-
8 ards under this section, the Board shall give due regard to
9 the need for mandatory safety and health standards for par-
10 ticular industries, trades, crafts, occupations, businesses,
11 workplaces or work environments. The Board shall also
12 give due regard to the recommendations of the Secretary
13 and the Secretary of Health, Education, and Welfare regard-
14 ing the need for mandatory standards in determining the
15 priority for establishing such standards.

16 (i) (1) The Board shall provide without regard to
17 requirements of Ch. 5, title 5, United States Code, for an
18 emergency temporary standard to take immediate effect
19 upon publication in the Federal Register if it determines (A)
20 that employees are exposed to grave danger from exposure
21 to substances determined to be toxic or from new hazards
22 resulting from the introduction of new processes, and (B)
23 that such emergency standard is necessary to protect em-
24 ployees from **such danger**.

25 (2) Such standard shall be effective until superseded

by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Board shall commence a hearing in accordance with sections 556 and 557 of title 5, United States Code, and the standard as published shall also serve as a proposed rule for the hearing. The Board shall promulgate a standard under this paragraph no later than six months after publication of the emergency temporary standard as provided in paragraph (2) of this subsection.

(j) (1) Whenever the Board upon the basis of information submitted to it in writing by an interested person (including a representative of an organization of employers or employees, or a nationally recognized standards-producing organization) or by the Secretary or the Secretary of Health, Education, and Welfare, a State or a political subdivision of a State, or on the basis of information otherwise available to it, determines that a rule should be prescribed under subsection (a) of this section, the Board may appoint an advisory committee as provided for in section 7(e) of this Act, which shall submit recommendations to the Board regarding the rule to be prescribed which will carry out the purposes of this Act, which recommendations shall be published by the Board in the Federal Register, either as part of a subsequent notice of proposed rulemaking or separately.

1 The recommendations of an advisory committee shall be
2 submitted to the Board within two hundred and seventy
3 days from its appointment, or within such longer or shorter
4 period as may be prescribed by the Board, but in no event
5 may the Board prescribe a period which is longer than one
6 year and three months.

7 (2) After the submission of such recommendations, the
8 Board shall, as soon as practicable and in any event within
9 four months, schedule and give notice of a hearing on the
10 recommendations of the advisory committee and any other
11 relevant subjects and issues. In the event that the advisory
12 committee fails to submit recommendations within two hun-
13 dred and seventy days from its appointment (or such longer
14 or shorter period as the Board has prescribed) the Board
15 shall make a proposal relevant to the purpose for which the
16 advisory committee was appointed, and shall within four
17 months schedule and give notice of hearing thereon. In
18 either case, notice of the time, place, subjects, and issues
19 of any such hearing shall be published in the Federal Regis-
20 ter thirty days prior to the hearing and shall contain the
21 recommendations of the advisory committee or the proposal
22 made in absence of such recommendation. Prior to the hear-
23 ing interested persons shall be afforded an opportunity to
24 submit comments upon any recommendations of the ad-
25 visory committee or other proposal. Only persons who have

submitted such comments shall have a right at such hearing to submit oral arguments, but nothing herein shall be deemed to prevent any person from submitting written evidence, data, views, or arguments.

(k) The Board shall within sixty days (where an advisory committee is utilized) or one hundred and twenty days (where no advisory committee is utilized) after completion of the hearing held pursuant to section 6(a) issue a rule promulgating, modifying, or revoking an occupational safety and health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Board determines may be appropriate to insure that affected employers are given an opportunity to familiarize themselves and their employees with the requirements of the standard.

(1) Any affected employer may apply to the Board for a rule or order for an exemption from the requirements of section 5(b) of this Act. Affected employees shall be given notice by the employer of each such application and an opportunity to participate in a hearing. The Board shall issue such rule or order if it determines on the record, after an opportunity for an inspection and a hearing, that the proponent of the exemption has demonstrated by a preponderance of the evidence that the conditions, practices, means,

1 methods, operations, or processes used or proposed to be
2 used by an employer will provide employment and places
3 of employment to his employees which are as safe and
4 healthful as those which would prevail if he complied with
5 the standard. The rule or order so issued shall prescribe the
6 conditions the employer must maintain, and the practices,
7 means, methods, operations, and processes which he must
8 adopt and utilize to the extent they differ from the standard
9 in question. Such a rule or order may be modified or revoked
10 upon application by an employer, employees, or by the
11 Board on its own motion in the manner prescribed for its
12 issuance at any time after six months after its issuance.

13 (m) Standards promulgated under this section shall
14 prescribe the posting of such labels or warnings as are neces-
15 sary to apprise employees of the nature and extent of hazards
16 and of the suggested methods of avoiding or ameliorating
17 them.

18 ADVISORY COMMITTEES

19 Sec. 7. (a) There is hereby established a National
20 Advisory Committee on Occupational Safety and Health
21 (hereafter in this section referred to as the "Committee")
22 consisting of twelve members appointed by the Secretary,
23 four of whom are to be designated by the Secretary of
24 Health, Education, and Welfare, without regard to the
25 civil service laws and composed equally of representatives

1 of management, labor and the public. The Secretary shall
2 designate one of the public members as Chairman. The
3 members shall be selected upon the basis of their experience
4 and competence in the field of occupational safety and
5 health.

6 (b) The Committee shall advise, consult with, and make
7 recommendations to the Secretary and the Secretary of
8 Health, Education, and Welfare on matters relating to the
9 administration of the Act. The Committee shall hold no
10 fewer than two meetings during each calendar year. All
11 meetings of the Committee shall be open to the public and
12 a transcript shall be kept and made available for public
13 inspection.

14 (c) The members of the Committee shall be compen-
15 sated in accordance with the provisions of subsection 8 (g)
16 of this Act.

17 (d) The Secretary shall furnish to the Committee an
18 executive secretary and such secretarial, clerical, and other
19 services as are deemed necessary to the conduct of its
20 business.

21 (e) An advisory committee which may be utilized by
22 the Board in its standard-setting functions under section 6
23 of this Act shall consist of not more than fifteen members
24 and shall include as a member one or more designees of the
25 Secretary of Health, Education, and Welfare, and also as a

1 member one or more designees of the Secretary of Labor
2 and shall include among its members an equal number of
3 persons qualified by experience and affiliation to present the
4 viewpoint of the employers involved, and of persons simi-
5 larly qualified to present the viewpoint of the workers in-
6 volved, as well as one or more representatives of health and
7 safety agencies of the States. An advisory committee may
8 also include such other persons as the Board may appoint
9 who are qualified by knowledge and experience to make a
10 useful contribution to the work of such committee, including
11 one or more representatives of professional organizations of
12 technicians or professionals specializing in occupational safety
13 or health, and one or more representatives of nationally rec-
14 ognized standards-producing organizations, but the number
15 of persons so appointed to any advisory committee shall not
16 exceed the number appointed to such committee as repre-
17 sentatives of Federal and State agencies. Persons appointed
18 to advisory committees from private life shall be compen-
19 sated in the same manner as consultants or experts under
20 section 8 (g) of this Act. The Board shall pay to any State
21 which is the employer of a member of such committee who
22 is a representative of the health or safety agency of that
23 State, reimbursement sufficient to cover the actual cost to the
24 State resulting from such representative's membership on
25 such committee. Any meeting of such committee shall be

open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

NATIONAL OCCUPATIONAL SAFETY AND HEALTH BOARD

SEC. 8. (a) The National Occupational Safety and Health Board is hereby established. The Board shall be composed of five members, having a background either by reason of previous training, education, or experience in the field of occupational safety or health, who shall be appointed by the President, by and with the consent of the Senate, and shall serve at the pleasure of the President. One of the five members may be designated at any time by the President to serve as Chairman of the Board.

(b) Subchapter II (relating to Executive Schedule pay rates) of chapter 53 of title V of the United States Code is amended as follows:

(1) Section 5314 (5 U.S.C. 5314) is amended by adding at the end thereof the following: "(54) Chairman, National Occupational Safety and Health Board."

(2) Section 5315 (5 U.S.C. 5315) is amended by adding at the end thereof the following: "(92) Members, National Occupational Safety and Health Board."

(c) The principal office of the Board shall be in the

1 District of Columbia. The Board shall have an official seal
2 which shall be judicially noticed and which shall be preserved
3 in the custody of the Secretary of the Board.

4 (d) The Chairman of the Board shall, without regard
5 to the civil service laws, appoint and prescribe the duties of
6 a Secretary of the Board.

7 (e) The Chairman shall be responsible on behalf of the
8 Board for the administrative operations of the Board, and
9 shall appoint, in accordance with the civil service laws, such
10 officers, hearing examiners, agents, attorneys, and employees
11 as are deemed necessary and to fix their compensation in
12 accordance with the Classification Act of 1949, as amended.

13 (f) Three members of the Board shall constitute a
14 quorum.

15 (g) The Board is authorized to employ experts, ad-
16 visers, and consultants or organizations thereof as author-
17 ized by section 3109 of title 5, United States Code, and
18 allow them while away from their homes or regular places
19 of business, travel expenses (including per diem in lieu of
20 subsistence) as authorized by section 5703 (b) of title 5,
21 United States Code, for persons in the Government service
22 employed intermittently, while so employed.

23 (h) To carry out its functions under this Act, the Board
24 is authorized to issue subpoenas for the attendance and testi-
25 mony of witnesses and the production of relevant papers,

1 books, and documents and administer oaths. Witnesses sum-
2 moned before the Board shall be paid the same fees and mile-
3 age that are paid witnesses in the courts of the United States.

4 (i) The Board may order testimony to be taken by
5 deposition in any proceeding pending before it at any
6 stage of such proceeding. Reasonable notice must first be
7 given in writing by the Board or by the party or his at-
8 torney of record, which notice shall state the name of the
9 witness and the time and place of the taking of his deposi-
10 tion. Any person may be compelled to appear and depose,
11 and to produce books, papers, or documents, in the same
12 manner as witnesses may be compelled to appear and testify
13 and produce like documentary evidence before the Board,
14 as provided in subsection (j) of this section. Witnesses
15 whose depositions are taken under this subsection, and
16 the persons taking such depositions, shall be entitled to the
17 same fees as are paid for like services in the courts of the
18 United States.

19 (j) In the case of contumacy by, or refusal to obey
20 a subpoena served upon any person under this section, the
21 Federal district court for any district in which such per-
22 son is found or resides or transacts business, upon applica-
23 tion by the United States, and after notice to such person
24 and hearing, shall have jurisdiction to issue an order re-
25 quiring such person to appear and produce documents be-

1 fore the Board, or both; and any failure to obey such order
2 of the court may be punished by such court as a contempt
3 thereof.

4 (k) The Board is authorized to make such rules as are
5 necessary for the orderly transaction of its proceedings.

6 DUTIES OF THE SECRETARY

7 Inspections, Investigations, and Reports

8 SEC. 9. (a) In order to carry out the purposes of this
9 Act, the Secretary, upon presenting appropriate credentials
10 to the owner, operator, or agent in charge, is authorized—

11 (1) to enter without delay and at reasonable times
12 any factory, plant, establishment, construction site, or
13 other area, workplace or environment where work is
14 performed by an employee of an employer; and

15 (2) to question any such employee and to inspect
16 and investigate during regular working hours and at
17 other reasonable times and within reasonable limits
18 and in a reasonable manner, any such area, workplace,
19 or environment, and all pertinent conditions, structures,
20 machines, apparatus, devices, equipment, and materials
21 therein.

22 (b) If the employer, or his representative, accompanies
23 the Secretary or his designated representative during the con-
24 duct of all or any part of an inspection, a representative au-

1 thorized by the employees shall also be given an opportunity
2 to do so.

3 (c) Each employer shall make, keep, and preserve for
4 such period of time, and make available to the Secretary
5 such record of his activities concerning the requirements
6 of this Act as the Secretary may prescribe by regulation or
7 order as necessary or appropriate for carrying out his duties
8 under this Act.

9 (d) In making his inspections and investigations under
10 this Act the Secretary may require the attendance and testi-
11 mony of witnesses and the production of evidence under
12 oath. Witnesses shall be paid the same fees and mileage that
13 are paid witnesses in the courts of the United States. In case
14 of contumacy, failure, or refusal of any person to obey such
15 an order, any district court of the United States or the
16 United States courts of any territory or possession, within
17 the jurisdiction of which such person is found, or resides or
18 transacts business, upon the application by the Secretary,
19 shall have jurisdiction to issue to such person an order
20 requiring such person to appear to produce evidence if, as,
21 and when so ordered, and to give testimony relating to the
22 matter under investigation or in question; and any failure to
23 obey such order of the court may be punished by said court
24 as a contempt thereof.

1 (e) In carrying out his responsibilities under this Act,
2 the Secretary is authorized to—

3 (1) use, with the consent of any Federal agency,
4 the services, facilities, and employees of such agency
5 with or without reimbursement, and with the consent of
6 any State or political subdivision thereof, accept and
7 use the services, facilities, and employees of the agencies
8 of such State or subdivision with or without reimburse-
9 ment; and

10 (2) employ experts and consultants or organiza-
11 tions thereof as authorized by section 3109 of title 5,
12 United States Code, except that contracts for such em-
13 ployment may be renewed annually; compensate individ-
14 uals so employed at rates not in excess of the rate spec-
15 ified at the time of service for grade GS-18 in section
16 5332 of title 5, United States Code, including travel-
17 time, and allow them while away from their homes or
18 regular places of business, travel expenses (including per
19 diem in lieu of subsistence) as authorized by section
20 5703 of title 5, United States Code, for persons in the
21 Government service employed intermittently, while so
22 employed.

23 (3) delegate his authority under subsection (a) of
24 this section to any agency of the Federal Government
25 with or without reimbursement and with its consent and

1 to any State agency or agencies designated by the Gov-
2 ernor of the State and with or without reimbursement
3 and under conditions agreed upon by the Secretary and
4 such State agency or agencies.

5 (f) Any information obtained by the Secretary, the
6 Secretary of Health, Education, and Welfare, or a State
7 agency under this Act shall be obtained with a minimum
8 burden upon employers, especially those operating small bus-
9 inesses. Unnecessary duplication of efforts in obtaining infor-
10 mation shall be reduced to the maximum extent feasible.

11 (g) The Secretary shall prescribe such rules and regu-
12 lations as he may deem necessary to carry out his responsi-
13 bilities under this Act, including rules and regulations dealing
14 with the inspection of an employer's establishment.

15 (h) There are hereby authorized to be appropriated such
16 sums as the Congress shall deem necessary to enable the
17 Secretary to purchase equipment which he determines as nec-
18 essary to measure the exposure of employees to working
19 environments which might cause cumulative or latent ill
20 effects.

21 CITATIONS AND SAFETY AND HEALTH APPEALS COMMIS-
22 SION HEARINGS

23 SEC. 10. (a) If, upon the basis of an inspection or in-
24 vestigation, the Secretary believes that an employer has
25 violated the requirements of section 5, 6, or 9 (c) of this Act,

1 or subsection (e) of this section, or regulations prescribed
2 pursuant to this Act, he shall issue a citation to the em-
3 ployer unless the violation is de minimis. The citation shall
4 be in writing and describe with particularity the nature of the
5 violation, including a reference to the requirement, standard,
6 rule, order, or regulation alleged to have been violated.

7 (b) In addition, the citation shall include—

8 (1) the amount of any proposed civil penalties; and

9 (2) a reasonable time within which the employer
10 shall correct the violation.

11 (c) The Secretary shall issue each citation within forty-
12 five days from the concurrence of the alleged violation but
13 for good cause the Secretary may extend such period up to
14 a maximum of ninety days from such occurrence.

15 (d) If an employer notifies the Secretary that he in-
16 tends to contest a citation issued under this section, the
17 Secretary shall notify the Safety and Health Appeals Com-
18 mission of the employer's intention and the Safety and Health
19 Appeals Commission shall afford the employer an oppor-
20 tunity for a hearing as provided in section 11 of this Act.
21 However, if the employer fails to notify the Secretary within
22 fifteen days after the receipt of the citation of his intention
23 to contest the citation issued by the Secretary, the citation
24 shall, on the day immediately following the expiration of

1 the fifteen-day period, become a final order of the Safety and
2 Health Appeals Commission.

3 (e) Each employer who receives a citation under this
4 section shall prominently post such citation or copy thereof
5 at or near each place a violation referred to in the citation
6 occurred.

7 (f) No citation may be issued under this section after
8 the expiration of three months following the occurrence of
9 any violation.

10 (g) Whenever the Secretary compromises, mitigates, or
11 settles any penalty assessed under this Act, he shall include
12 a statement of the reasons for such action, and such statement
13 shall be published in the Federal Register.

14 OCCUPATIONAL SAFETY AND HEALTH APPEALS
15 COMMISSION

16 SEC. 11. A. ORGANIZATION AND JURISDICTION—

17 (1) STATUS.—The Occupational Safety and Health
18 Appeals Commission is hereby established as an independent
19 agency in the Executive Branch of the Government. The
20 members thereof shall be known as the Chairman of the
21 Commission and the Commissioners of the Occupational
22 Safety and Health Appeals Commission.

23 (2) JURISDICTION.—The Commission shall have such
24 jurisdiction as is conferred on it by this Act.

1 (3) MEMBERSHIP.—(a) The Commission shall be
2 composed of three Commissioners, appointed by the Presi-
3 dent, by and with the advice and consent of the Senate, solely
4 on the grounds of fitness to perform the duties of the office.

5 (b) The salary of the Chairman of the Commission
6 shall be equal to that provided for the executive level in
7 section 5314, title 5, United States Code, and the salary of
8 the remaining two Commissioners shall be in accordance with
9 the executive level as provided in section 5315, title 5,
10 United States Code.

11 (c) The terms of office of the Commissioners shall be
12 as follows: one Commissioner shall be appointed for a term
13 of two years, one Commissioner shall be appointed for a
14 term of four years, and the remaining Commissioner for a
15 term of six years, respectively. Their successors shall be
16 appointed for terms of six years each, except that vacancy
17 caused by death, resignation, or removal of a member prior
18 to the expiration of the term for which he was appointed
19 shall be filled only for the remainder of such unexpired term.
20 A Commissioner may be removed by the President for
21 inefficiency, neglect of duty, or malfeasance in office.

22 (d) A Commissioner removed from office in accord-
23 ance with the provisions of this section shall not be per-
24 mitted at any time to practice before the Commission.

1 (4) ORGANIZATION.—(a) The Commission shall have
2 a seal which shall be judicially noticed.

3 (b) The President may at any time designate one of
4 the three Commissioners to serve as Chairman of the Com-
5 mission.

6 (c) A majority of the Commissioners shall constitute
7 a quorum for the transaction of the Commission's business. A
8 vacancy shall not impair its powers nor affect its duties.

9 (d) The principal office of the Commission shall be in
10 the District of Columbia, but it may sit at any place within
11 the United States giving due consideration to the expedi-
12 tious conduct of its proceedings and the convenience of the
13 parties.

14 (5) HEARING EXAMINERS.—(a) The Commission may
15 appoint hearing examiners to conduct such business as the
16 Commission may require. Each hearing examiner shall be an
17 attorney at law and shall be selected from the Civil Service
18 Commission list of individuals eligible for selection as admin-
19 istrative hearing examiners.

20 (b) Except as otherwise provided in this Act, the hear-
21 ing examiners shall be subject to the laws governing em-
22 ployees in the classified civil service, except that appoint-
23 ments shall be made without regard to 5 U.S.C. 5108. Each

1 hearing examiner shall receive compensation at a rate not
2 less than the GS-16 level.

3 B. PROCEDURE—

4 (1) REPRESENTATION OF PARTIES.—The Secretary or
5 his delegate shall be represented by the Solicitor of Labor
6 or his delegate before the Commission. The respondent shall
7 be represented in accordance with the rules of practice
8 prescribed by the Commission.

9 (2) RULES OF PRACTICE, PROCEDURE, AND EVI-
10 DENCE.—The proceedings of the Commission shall be con-
11 ducted in accordance with such rules of practice and pro-
12 cedure (other than rules of evidence) as the Commission
13 may prescribe and in accordance with the rules of evidence
14 applicable in trials without a jury in the United States Dis-
15 trict Court of the District of Columbia.

16 (3) SERVICE OF PROCESS.—The mailing by certified
17 mail or registered mail of any pleading, decision, order, notice
18 or process in respect of proceedings before the Commission
19 shall be held sufficient service of such pleading, decision,
20 order, notice, or process.

21 (4) ADMINISTRATION OF OATHS AND PROCUREMENT
22 OF TESTIMONY.—For the efficient administration of the func-
23 tions vested in the Commission any Commissioner of the
24 Commission, the clerk of the Commission, or any other
25 employee of the Commission designated in writing for the

1 purpose by the Chairman of the Commission, may administer
2 oaths, and any Commissioner may examine witnesses and
3 require, by subpoena ordered by the Commission and signed
4 by the Commissioner (or by the Secretary of the Commis-
5 sion or by any other employee of the Commission when
6 acting under authority from the Secretary of the Commis-
7 sion—

8 (a) The attendance and testimony of witnesses, and
9 the production of all necessary books, papers, documents,
10 correspondence, and other evidence, from any place in the
11 United States at any designated place of hearing, or

12 (b) The taking of a deposition before any designated
13 individual competent to administer oaths under this title. In
14 the case of a deposition the testimony shall be reduced to
15 writing by the individual taking the deposition or under
16 his direction and shall then be subscribed by the deponent.

17 (5) WITNESS FEES.—(a) Any witness summoned or
18 whose deposition is taken shall receive the same fees and
19 mileage as witnesses in courts of the United States.

20 (b) Such fees and mileage and the expenses of taking
21 any such deposition shall be paid as follows:

22 (A) In the case of witnesses for the Secretary or
23 his delegate, such payments shall be made by the Sec-
24 retary or his delegate out of any moneys appropriated

1 for the enforcement of this Act and may be made in
2 advance.

3 (B) In the case of any other witnesses, such pay-
4 ments shall be made, subject to rules prescribed by the
5 Commission, by the party at whose instance the witness
6 appears or the deposition is taken.

7 (6) HEARINGS.—Notice and opportunity to be heard
8 upon any proceeding instituted before the Commission shall
9 be given to the respondent and the Secretary or his delegate.
10 If an opportunity to be heard upon the proceedings is given
11 before a hearing examiner of the Commission, neither the
12 respondent nor the Secretary nor his delegate shall be en-
13 titled to notice and opportunity to be heard before the Com-
14 mission upon review, except upon a specific order of the
15 Chairman of the Commission. Hearings before the Commis-
16 sion shall be open to the public, and the testimony, and, if
17 the Commission so requires, the argument, shall be steno-
18 graphically reported. The Commission is authorized to con-
19 tract for the reporting of such hearings, and in such contract
20 to fix the terms and conditions under which transcripts will
21 be supplied by the contractor to the Commission and to
22 others and agencies.

23 (7) REPORTS AND DECISIONS.—(a) A report upon
24 any proceeding instituted before the Commission and a
25 decision thereon shall be made as quickly as practicable.

1 The decision shall be made by a Commissioner in accordance
2 with the report of the Commission, and such decision so
3 made shall, when entered, be the decision of the Commission.

4 (b) It shall be the duty of the Commission to include
5 in its report upon any proceeding its findings of fact or
6 opinion or memorandum opinion. The Commission shall
7 report in writing all its findings of fact, opinions, and mem-
8 orandum opinions.

9 (c) A decision of the Commission dismissing the pro-
10 ceeding shall be considered as its decision.

11 (8) PROCEDURES IN REGARD TO THE HEARING EX-
12 AMINERS.—(a) A hearing examiner shall hear, and make a
13 determination upon, any proceeding instituted before the
14 Commission and any motion in connection therewith, as-
15 signed to such hearing examiner by the Chairman of the
16 Commission, and shall make a report of any such determina-
17 tion which constitutes his final disposition of the proceeding.

18 (b) The report of the hearing examiner shall become
19 the report of the Commission within thirty days after such
20 report by the hearing examiner unless within such period
21 any Commissioner has directed that such report shall be
22 reviewed by the Commission. Any preliminary action by
23 a hearing examiner which does not form the basis for the
24 entry of the final decision shall not be subject to review by
25 the Commission except in accordance with such rules as the

1 Commission may prescribe. The report of a hearing examiner
2 shall not be a part of the record in any case in which the
3 Chairman directs that such report shall be reviewed by the
4 Commission.

5 (9) PUBLICITY OF PROCEEDINGS.—All reports of the
6 Commission and all evidence received by the Commission,
7 including a transcript of the stenographic report of the hear-
8 ings, shall be public records open to the inspection of the
9 public; except that after the decision of the Commission in
10 any proceeding which has become final the Commission
11 may, upon motion of the respondent or the Secretary or his
12 delegate, permit the withdrawal by the party entitled thereto
13 of originals of books, documents, and records, and of models,
14 diagrams, and other exhibits, introduced in evidence before
15 the Commission; or the Commission may, on its own mo-
16 tion, make such other disposition thereof as it deems
17 advisable.

18 (10) PUBLICATION OF REPORTS.—The Commission
19 shall provide for the publication of its reports at the Govern-
20 ment Printing Office in such form and manner as may be best
21 adapted for public information and use, and such authorized
22 publication shall be competent evidence of the reports of the
23 Commission therein contained in all courts of the United
24 States and of the several States without any further proof or
25 authentication thereof. Such reports shall be subject to sale

1 in the same manner and upon the same terms as other public
2 documents.

3 (11) Upon issuance of a citation and notification of the
4 Commission, pursuant to section 10, the Commission shall
5 afford an opportunity for a hearing, and shall issue such or-
6 ders, and make such decisions, based upon findings of fact,
7 as are deemed necessary to enforce the Act.

8 C. MISCELLANEOUS PROVISIONS.—

9 (1) EMPLOYEES.—(a) Appointment and Compensa-
10 tion. The Commisison is authorized in accordance with the
11 civil service laws to appoint, and in accordance with the Clas-
12 sification Act of 1949 (63 Stat. 954; 5 U.S.C. chapter 21),
13 as amended to fix the compensation of such employees, in-
14 cluding a Secretary to the Commission, as may be necessary
15 to efficiently execute the functions vested in the Commission.

16 (b) Expenses for Travel and Subsistence. The em-
17 ployees of the Commission shall receive their necessary
18 traveling expenses, and expenses for subsistence while travel-
19 ing on duty and away from their designated stations, as pro-
20 vided in the Travel Expense Act of 1949 (63 Stat. 166; 5
21 U.S.C., chapter 16).

22 (2) EXPENDITURES.—The Commission is authorized
23 to make such expenditures (including expenditures for per-
24 sonal services and rent at the seat of Government and else-

1 where, and for law books, books of reference, and periodi-
2 cals), as may be necessary to efficiently execute the func-
3 tions vested in the Commission. All expenditures of the
4 Commission shall be allowed and paid, out of any moneys
5 appropriated for purposes of the Commission, upon presenta-
6 tion of itemized vouchers therefor signed by the certifying
7 officer designated by the Chairman.

8 (3) DISPOSITION OF FEES.—All fees received by the
9 Commission shall be covered into the Treasury as miscel-
10 laneous receipts.

11 (4) FEE FOR TRANSCRIPT OF RECORD.—The Com-
12 mission is authorized to fix a fee, not in excess of the fee
13 fixed by law to be charged and collected therefor by the
14 clerks of the district courts, for comparing, or for preparing
15 and comparing, a transcript of the record, or for copying
16 any record, entry, or other paper and the comparison and
17 certification thereof.

18 PROCEDURES TO COUNTERACT IMMINENT DANGERS

19 Sec. 12. (a) The United States district courts shall
20 have jurisdiction, upon petition of the Secretary, to restrain
21 any conditions or practices in any place of employment
22 which are such that a danger exists which could reasonably
23 be expected to cause death or serious physical harm im-
24 mediately or before the imminence of such danger can be

1 eliminated through the enforcement procedures otherwise
2 provided by this Act.

3 (b) Upon the filing of any such petition the district
4 court shall have jurisdiction to grant such injunctive relief
5 or temporary restraining order pending the outcome of an
6 enforcement proceeding pursuant to section 11 of this Act.
7 The proceeding shall be as provided by Rule 65 of the
8 Federal Rules, Civil Procedure, except that no temporary
9 restraining order issued without notice shall be effective for
10 a period longer than five days.

11 (c) Whenever and as soon as an inspector concludes
12 that conditions or practices described in subsection (a) exist
13 in any place of employment, he shall inform the affected em-
14 ployees and employers of the danger and that he is recom-
15 mending to the Secretary that relief be sought.

16 (d) If the Secretary unreasonably fails to petition the
17 court for appropriate relief under this section and any em-
18 ployee is injured thereby either physically or financially
19 by reason of such failure on the part of the Secretary, such
20 employee may bring an action against the United States in
21 the Court of Claims in which he may recover the damages
22 he has sustained, including reasonable court costs and
23 attorney's fees.

24 (e) In any case where a temporary restraining order is

1 obtained under this section by the Secretary, the court which
2 grants such relief shall set a sum which it deems proper for
3 the payment of such costs, damages, and attorney's fees as
4 may be incurred or suffered by any employer who is found
5 to have been wrongfully restrained or enjoined. In no case
6 shall any employer wrongfully restrained or enjoined be en-
7 titled to a recovery for costs, damages, and attorney's fees
8 in excess of the sum set by the court.

9 JUDICIAL PROCEEDINGS

10 SEC. 13. (a) (1) Any employer required by an order
11 of the Commission to comply with the standards, regulations,
12 or requirements under this Act, or to pay a penalty, may
13 obtain judicial review of such order by filing a petition for
14 review, within sixty days after service of such order, in the
15 United States court of appeals for the circuit wherein the
16 violation is alleged to have occurred or wherein the em-
17 ployer has its principal office. A copy of the petition shall
18 forthwith be transmitted by the clerk of the court to the
19 Commission and to the Secretary.

20 (2) The Secretary may also obtain judicial review or
21 enforcement of a decision of the Commission as provided in
22 subsection (1) of this section.

23 (3) Until the record in a case shall have been filed in
24 a court, as herein provided, the Commission may at any
25 time, upon reasonable notice and in such manner as it shall

1 deem proper, modify or set aside, in whole or in part any
2 finding, order, or rule made or issued by it.

3 (4) Upon the filing of a petition for review under this
4 section, such court shall have jurisdiction of the proceeding
5 and shall have power to affirm the order of the Commission,
6 or to set aside, in whole or in part, temporarily or per-
7 manently, and to enforce such order to the extent that it is
8 affirmed. To the extent that the order of the Commission is
9 affirmed, the court shall thereupon issue its own order re-
10 quiring compliance with the terms of the order of the Com-
11 mission. The commencement of proceedings under this
12 paragraph shall not, unless specifically ordered by the court,
13 operate as a stay of the order of the Commission.

14 (5) No objection to the order of the Commission shall
15 be considered by the court unless such objection was urged
16 before the Commission or unless there were reasonable
17 grounds for failure to do so. The findings of the Commission
18 as to the facts, if supported by substantial evidence on the
19 record considered as a whole, shall be conclusive, but the
20 court, for good cause shown, may remand the case to the
21 Commission for the taking of additional evidence in such
22 manner and upon such terms and conditions as the court may
23 deem proper, in which event the Commission may make new
24 or modified findings and shall file such findings (which, if
25 supported by substantial evidence on the record considered

1 as a whole, shall be conclusive) and its recommendation,
2 if any, for the modification or setting aside of its original
3 order, with the return of such additional evidence.

4 (6) The judgment of the court affirming or setting aside,
5 in whole or in part, any order under this subsection shall be
6 final, subject to review by the Supreme Court of the United
7 States upon certiorari or certification as provided in section
8 1254 of title 28, United States Code.

9 (7) An order of the Commission shall become final
10 under the same conditions as an order of the Federal Trade
11 Commission under section 45 (g) of title 15, United States
12 Code.

13 (b) Any interested person affected by the action of the
14 Board in issuing a standard under section 6 may obtain re-
15 view of such action by the United States Court of Appeals
16 for the District of Columbia by filing in such court within
17 thirty days following the publication of such rule a petition
18 praying that the action of the Board be modified or set aside
19 in whole or in part. A copy of such petition shall forthwith
20 be served upon the Board and thereupon the Board shall
21 certify and file in the court the record upon which the action
22 complained of was issued as provided in section 2112 of
23 title 28, United States Code. Review by the court shall be
24 in accord with the provisions of section 706 of title 5, United

1 States Code. The court, for good cause shown, may remand
2 the case to the Board to take further evidence, and the Board
3 may thereupon make new or modified findings of fact and
4 may modify its previous action and shall certify to the court
5 the record of the further proceedings. The remedy provided
6 by this subsection for reviewing a standard or rule shall be
7 exclusive. The judgment of the court shall be subject to re-
8 view by the Supreme Court of the United States upon certio-
9 rari or certification as provided in section 1254 of title 28,
10 United States Code. The commencement of a proceeding
11 under this subsection shall not, unless specifically ordered
12 by the court, delay the application of the Board's standards.

13 (c) Civil penalties owed under this Act shall be paid
14 to the Secretary for deposit into the Treasury of the United
15 States and shall accrue to the United States and may be
16 recovered in a civil suit in the name of the United States
17 brought in the Federal district court in the district where
18 the violation is alleged to have occurred or where the em-
19 ployer has its principal office.

20 (d) The Federal district courts shall have jurisdiction
21 of actions to collect penalties prescribed in this Act and may
22 provide such additional relief as the court deems appro-
23 priate to carry out the order of the Occupational Safety and
24 Health Appeals Commission.

1 **REPRESENTATION IN CIVIL LITIGATION**

2 **SEC. 14.** Except as provided in section 518 (a) of title
3 28, United States Code, relating to litigation before the
4 Supreme Court and the Court of Claims, the Solicitor of
5 Labor may appear for and represent the Secretary in any
6 civil litigation brought under this Act but all such litigation
7 shall be subject to the direction and control of the Attorney
8 General.

9 **CONFIDENTIALITY OF TRADE SECRETS**

10 **SEC. 15.** All information reported to or otherwise ob-
11 tained by the Secretary or his representative in connection
12 with any inspection or proceeding under this Act which
13 contains or which might reveal a trade secret referred to in
14 section 1905 of title 18 of the United States Code shall be
15 considered confidential for the purpose of that section, ex-
16 cept that such information may be disclosed to other officers
17 or employees concerned with carrying out this Act or when
18 essential in any proceeding under this Act. However, any
19 such information shall be recorded and presented off the
20 official public record, and shall be kept and preserved
21 separately.

22 **VARIATIONS, TOLERANCES, AND EXEMPTIONS**

23 **SEC. 16.** The Board, on the record, after notice and op-
24 portunity for a hearing may provide such reasonable limita-
25 tions and may make such rules and regulations allowing

1 reasonable variations, tolerances, and exemptions to and
2 from any or all provisions of this Act as it may find neces-
3 sary and proper to avoid serious impairment of the national
4 defense. Such action shall not be in effect for more than
5 six months without notification to affected employees and
6 an opportunity being afforded for a hearing.

7 PENALTIES

8 SEC. 17. (a) Any employer who willfully or repeatedly
9 violates the requirements of section 5 of this Act, any stand-
10 ard or rule promulgated pursuant to section 6 of this Act, or
11 regulations prescribed pursuant to this Act, may be assessed
12 a civil penalty of not more than \$10,000 for each violation.

13 (b) Any citation for a serious violation of the require-
14 ments of section 5 of this Act, of any standard or rule promul-
15 gated pursuant to section 6 of this Act, or of any regulations
16 prescribed pursuant to this Act, shall include a proposed
17 penalty of up to \$1,000 for each such violation.

18 (c) Any employer who violates the requirements of sec-
19 tion 5 of this Act, any standard or rule promulgated pursuant
20 to section 6 of this Act, or regulations prescribed pursuant
21 to this Act, and such violation is specifically determined by
22 the Secretary not to be of a serious nature, the Secretary may
23 include in the citation issued for such violation a proposed
24 penalty of up to \$1,000 for each such violation.

25 (d) Any employer who violates any order or citation

1 which has become final in accordance with the provision of
2 section 10 of this Act may be assessed a penalty of up to
3 \$1,000 for each such violation. When such violation is of a
4 continuing nature, each day during which it continues shall
5 constitute a separate offense for the purpose of assessing the
6 penalty except where such order or citation is pending re-
7 view under section 11 of this Act.

8 (c) Any person who forcibly assaults, resists, opposes,
9 impedes, intimidates, or interferes with any person while
10 engaged in or on account of the performance of inspections or
11 investigatory duties under this Act shall be fined not more
12 than \$5,000 or imprisoned not more than three years, or
13 both. Whoever, in the commission of any such acts, uses a
14 deadly or dangerous weapon, shall be fined not more than
15 \$10,000 or imprisoned not more than ten years or both.
16 Whoever kills a person while engaged in or on account of
17 the performance of inspecting or investigating duties under
18 this Act shall be punished by imprisonment for any term of
19 years or for life.

20 (f) Any employer who violates any of the posting re-
21 quirements, as prescribed under the provisions of this Act,
22 shall be assessed by the Commission a civil penalty of up to
23 \$1,000 for each such violation.

24 (g) Any person who discharges or in any other manner
25 discriminates against any employee because such employee

1 has filed any complaint or instituted or caused to be instituted
2 any proceeding under or related to this Act, or has testified
3 or is about to testify in any such proceeding, shall be assessed
4 a civil penalty by the Commission of up to \$10,000. Such
5 person may also be subject to a fine of not more than
6 \$10,000 or imprisonment of a period not to exceed ten
7 years or both.

8 (h) The Commission shall have authority to assess and
9 collect all penalties provided in this section, giving due con-
10 sideration to the appropriateness of the penalty with respect
11 to the size of the business being charged, the gravity of the
12 violation, the good faith of the employer, and the history
13 of previous violations.

14 (i) For purposes of this section a serious violation shall
15 be deemed to exist in a place of employment if there is a
16 substantial probability that death or serious physical harm
17 could result from a condition which exists, or from one or
18 more practices, means, methods, operations, or processes
19 which have been adopted or are in use, in such place of
20 employment unless the Secretary determines that the
21 employer did not, and could not with the exercise of reason-
22 able diligence, know of the presence of the violation.

23 STATE JURISDICTION AND STATE PLANS

24 SEC. 18. (a) Nothing in this Act shall prevent any
25 State agency or court from asserting jurisdiction under State

1 law over any occupational safety or health issue with respect
2 to which no standard is in effect under section 6.

3 (b) Any State which, at any time, desires to assume
4 responsibility for development and enforcement therein of
5 occupational safety and health standards relating to any
6 occupational safety or health issue with respect to which a
7 Federal standard has been promulgated under section 6 shall
8 submit a State plan for the development of such standards
9 and their enforcement.

10 (c) The Secretary shall approve the plan submitted by
11 a State under subsection (b), or any modification thereof, if
12 such plan in his judgment—

13 (1) designates a State agency or agencies as the
14 agency or agencies responsible for administering the
15 plan throughout the State.

16 (2) provides for the development and enforcement
17 of safety and health standards relating to one or more
18 safety or health issues, which standards (and the en-
19 forcement of which standards) are or will be at least
20 as effective in providing safe and healthful employment
21 and places of employment as the standards promulgated
22 under section 6 which relate to the same issues.

23 (3) provides for a right of entry and inspection
24 of all workplaces subject to the Act which is at least as

effective as that provided in section 9 (a) (1), and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under

1 subsection (b), he shall afford the State submitting the plan
2 due notice and opportunity for a hearing before so doing.

3 (c) After the Secretary approves a State plan submitted
4 under subsection (b), he may, but shall not be required
5 to, exercise his authority under sections 9, 10, 11, and 12
6 with respect to comparable standards promulgated under
7 section 6, for the period specified in the next sentence. The
8 Secretary may exercise the authority referred to above until
9 he determines, on the basis of actual operations under the
10 State plan, that the criteria set forth in subsection (c) are
11 being applied, but he shall not make such determination for
12 at least three years after the plan's approval under subsec-
13 tion (c). Upon making the determination referred to in
14 the preceding sentence, the provisions of sections 5(b), 9
15 (except for the purpose of carrying out subsection (c)),
16 10, 11, and 12, and standards promulgated under section 6
17 of this Act, shall not apply with respect to any occupational
18 safety or health issues covered under the plan, but the Secre-
19 tary may retain jurisdiction under the above provisions in
20 any proceeding commenced under section 10 or 11 before
21 the date of determination.

22 (f) The Secretary shall, on the basis of reports submitted
23 by the State agency and his own inspections make a con-
24 tinuing evaluation of the manner in which each State having
25 a plan approved under this section is carrying out such

1 plan. Whenever the Secretary finds, after affording due
2 notice and opportunity for a hearing, that in the administra-
3 tion of the State plan there is a failure to comply substantially
4 with any provision of the State plan (or any assurance
5 contained therein), he shall notify the State agency of his
6 withdrawal of approval of such plan and upon receipt of
7 such notice such plan shall cease to be in effect, but the State
8 may retain jurisdiction in any case commenced before the
9 withdrawal of the plan in order to enforce standards under
10 the plan whenever the issues involved do not relate to the
11 reasons for the withdrawal of the plan.

12 (g) The State may obtain a review of a decision of the
13 Secretary withdrawing approval of or rejecting its plan by
14 the United States court of appeals for the circuit in which the
15 State is located by filing in such court within thirty days fol-
16 lowing receipt of notice of such decision a petition praying
17 that the action of the Secretary be modified or set aside in
18 whole or in part. A copy of such petition shall forthwith be
19 served upon the Secretary, and thereupon the Secretary shall
20 certify and file in the court the record upon which the deci-
21 sion complained of was issued as provided in section 2112 of
22 title 28, United States Code. Unless the court finds that the
23 Secretary's decision in rejecting a proposed State plan or
24 withdrawing his approval of such a plan to be arbitrary and
25 capricious, the court shall affirm the Secretary's decision. The

1 judgment of the court shall be subject to review by the Su-
2 preme Court of the United States upon certiorari or certifica-
3 tion as provided in section 1254 of title 28, United States
4 Code.

5 **FEDERAL AGENCY SAFETY PROGRAMS AND**
6 **RESPONSIBILITIES**

7 SEC. 19. (a) It shall be the responsibility of the head of
8 each Federal agency to establish and maintain an effective
9 and comprehensive occupational safety and health program
10 which is consistent with the standards promulgated under
11 section 6. The head of each agency shall (after consultation
12 with representatives of the employees thereof) —

13 (1) provide safe and healthful places and condi-
14 tions of employment, consistent with the standards set
15 under section 6;

16 (2) acquire, maintain, and require the use of safety
17 equipment, personal protective equipment, and devices
18 reasonably necessary to protect employees;

19 (3) keep adequate records of all occupational acci-
20 dents and illnesses for proper evaluation and necessary
21 corrective action;

22 (4) consult with the Secretary with regard to the
23 adequacy as to form and content of records kept pursu-
24 ant to subsection (a) (3) of this section; and

25 (5) make an annual report to the Secretary with

1 respect to occupational accidents and injuries and the
2 agency's program under this section. Such report shall
3 include any report submitted under section 7902 (e) (2)
4 of title 5, United States Code.

5 (b) The Secretary shall report to the President a sum-
6 mary or digest of reports submitted to him under subsection
7 (a) (5) of this section, together with his evaluations of and
8 recommendations derived from such reports. The President
9 shall transmit annually to the Senate and the House of Rep-
10 resentatives a report of the activities of Federal agencies
11 under this section.

12 (c) Section 7902 (c) (1) of title 5, United States Code
13 is amended by inserting after "agencies" the following: "and
14 of labor organizations representing employees".

15 (d) The Secretary shall have access to records and re-
16 ports kept and filed by Federal agencies pursuant to sub-
17 sections (a) (3) and (5) of this section unless those rec-
18 ords and reports are specifically required by Executive order
19 to be kept secret in the interest of the national defense or
20 foreign policy, in which case the Secretary shall have access
21 to such information as will not jeopardize national defense
22 or foreign policy.

23 TRAINING AND EMPLOYEE EDUCATION

24 SEC. 20. (a) The Secretary of Health, Education, and
25 Welfare, after consultation with the Secretary of Labor, the

1 Board, and with other appropriate Federal departments and
2 agencies, shall conduct, directly or by grants or contracts
3 (1) education programs to provide an adequate supply of
4 qualified personnel to carry out the purposes of this Act,
5 and (2) informational programs on the importance of and
6 proper use of adequate safety and health equipment.

7 (b) The Secretary is also authorized to conduct (direct-
8 ly or by grants or contracts) short-term training of per-
9 sonnel engaged in work related to his responsibilities under
10 this Act.

11 (c) The Secretary, in consultation with the Secretary of
12 Health, Education, and Welfare, shall provide for the estab-
13 lishment and supervision of programs for the education and
14 training of employers and employees in the recognition,
15 avoidance, and prevention of unsafe or unhealthful work-
16 ing conditions in employments covered by this Act, and to
17 consult with and advise employers and employees, and
18 organizations representing employers and employees as to
19 effective means of preventing occupational injuries and
20 illnesses.

21 GRANTS TO THE STATES

22 SEC. 21. (a) The Secretary is authorized, during the
23 fiscal year ending June 30, 1971, and the two succeeding
24 fiscal years, to make grants to the States which have desig-
25 nated a State agency under section 18(c) to assist them

1 (1) in identifying their needs and responsibilities in the
2 area of occupational safety and health, (2) in developing
3 State plans under section 18, or (3) in developing plans
4 for—

5 (A) establishing systems for the collection of in-
6 formation concerning the nature and frequency of occu-
7 pational injuries and diseases;

8 (B) increasing the expertise and enforcement capa-
9 bilities of their personnel engaged in occupational safety
10 and health programs; or

11 (C) otherwise improving the administration and
12 enforcement of State occupational safety and health laws,
13 including standards thereunder, consistent with the ob-
14 jectives of this Act.

15 (b) The Secretary is authorized, during the fiscal year
16 ending June 30, 1971, and the two succeeding fiscal years,
17 to make grants to the States for experimental and demon-
18 stration projects consistent with the objectives set forth in
19 subsection (a) of this section.

20 (c) The Governor of the State shall designate the ap-
21 propriate State agency, or agencies, for receipt of any grant
22 made by the Secretary under this section.

23 (d) Any State agency, or agencies, designated by the
24 Governor of the State, desiring a grant under this section
25 shall submit an application therefor to the Secretary.

1 (c) The Secretary shall review the application, and
2 shall, after consultation with the Secretary of Health, Educa-
3 tion, and Welfare, approve or reject such application.

4 (f) The Federal share for each State grant under sub-
5 section (a) or (b) of this section may be up to 90 per
6 centum of the State's total cost. In the event the Federal
7 share for all States under either such subsection is not the
8 same, the differences among the States shall be established
9 on the basis of objective criteria.

10 (g) The Secretary is authorized to make grants to the
11 States to assist them in administering and enforcing programs
12 for occupational safety and health contained in State plans
13 approved by the Secretary pursuant to section 18 of this
14 Act. The Federal share for each State grant under this sub-
15 section may be up to 50 per centum of the State's total cost.
16 The last sentence of subsection (f) shall be applicable in
17 determining the Federal share under this subsection.

18 (h) Prior to June 30, 1973, the Secretary shall, after
19 consultation with the Secretary of Health, Education, and
20 Welfare, transmit a report to the President and to Congress,
21 describing the experience under the program and making
22 any recommendations he may deem appropriate.

23 ECONOMIC ASSISTANCE TO SMALL BUSINESSES

24 SEC. 22. (a) Section 7 (b) of the Small Business Act,
25 as amended, is amended—

1 (1) by striking out the period at the end of "para-
2 graph (5)" and inserting in lieu thereof "; and"; and

3 (2) by adding after paragraph (5) a new para-
4 graph as follows:

5 “(6) to make such loans (either directly or in coopera-
6 tion with banks or other lending institutions through agree-
7 ments to participate on an immediate or deferred basis) as
8 the Administration may determine to be necessary or appro-
9 priate to assist any small business concern in affecting addi-
10 tions to or alterations in the equipment, facilities, or methods
11 of operation of such business in order to comply with the
12 applicable standards promulgated pursuant to section 6 of
13 the Occupational Safety and Health Act or standards
14 adopted by a State pursuant to a plan approved under
15 section 18 of the Occupational Safety and Health Act, if the
16 Administration determines that such concern is likely to
17 suffer substantial economic injury without assistance under
18 this paragraph.”

19 (b) The third sentence of section 7(b) of the Small
20 Business Act, as amended, is amended by striking out “or
21 (5)” after “paragraph (3)” and inserting a comma fol-
22 lowed by “(5) or (6)”.

23 (c) Section 4(c) (1) of the Small Business Act, as
24 amended, is amended by inserting “7(b) (6),” after “7
25 (b) (5),”.

1 (d) Loans may also be made or guaranteed for the pur-
2 poses set forth in section 7 (b) (6) of the Small Business
3 Act, as amended, pursuant to the provisions of section 202
4 of the Public Works and Economic Development Act of
5 1965, as amended.

6 RESEARCH AND RELATED ACTIVITIES

7 SEC. 23. (a) (1) The Secretary of Health, Education,
8 and Welfare, after consultation with the Secretary, the Board,
9 and with other appropriate Federal departments or agencies,
10 shall conduct (directly or by grants or contracts) research,
11 experiments, and demonstrations relating to occupational
12 safety and health, including studies of psychological factors
13 involved, and relating to innovative methods, techniques,
14 and approaches for dealing with occupational safety and
15 health problems.

16 (2) The Secretary of Health, Education, and Welfare
17 shall from time to time consult with the Board in order to
18 develop specific plans for such research, demonstrations, and
19 experiments as are necessary to produce criteria, including
20 criteria identifying toxic substances, enabling the Board to
21 meet its responsibility for the formulation of safety and
22 health standards under this Act; and the Secretary of Health,
23 Education, and Welfare, on the basis of such research, dem-
24 onstrations, and experiments and any other information

1 available to him, shall develop and publish at least annually
2 such criteria as will effectuate the purposes of this Act.

3 (3) The Secretary of Health, Education, and Welfare
4 shall also conduct special research, experiments, and demon-
5 strations relating to occupational safety and health as are
6 necessary to explore new problems, including those created
7 by new technology in occupational safety and health, which
8 may require ameliorative action beyond that which is other-
9 wise provided for in the operating provisions of this Act.
10 The Secretary of Health, Education, and Welfare shall also
11 conduct research into the motivational and behavioral factors
12 relating to the field of occupational safety and health.

13 (4) The Secretary of Health, Education, and Welfare
14 shall publish within six months of enactment of this Act and
15 thereafter as needed but at least annually a list of all known
16 toxic substances by generic family or other useful group-
17 ing, and the concentrations at which such toxicity is known
18 to occur.

19 (5) The Board shall respond, as soon as possible, to a
20 request by any employer or employee for a determination
21 whether or not any substance normally found in a working
22 place has toxic or harmful effects in such concentration as
23 used or found.

24 (b) The Secretary of Health, Education, and Welfare

1 is authorized to make inspections and question employers
2 and employees as provided in section 9 of this Act in order
3 to carry out his functions and responsibilities under this
4 section.

5 (c) The Secretary is authorized to enter into contracts,
6 agreements, or other arrangements with appropriate public
7 agencies or private organizations for the purpose of conduct-
8 ing studies relating to his responsibilities under this Act. In
9 carrying out his responsibilities under this subsection, the
10 Secretary and the Secretary of Health, Education, and Wel-
11 fare shall cooperate in order to avoid any duplication of efforts
12 under this section.

13 (d) Information obtained by the Secretary, the Board,
14 and the Secretary of Health, Education, and Welfare under
15 this section shall be disseminated by the Secretary to em-
16 ployers and employees and organizations thereof.

17 STATISTICS

18 SEC. 24. (a) In order to further the purposes of this
19 Act, the Secretary shall develop and maintain an effective
20 program of collection, compilation, and analysis of occupa-
21 tional safety and health statistics. Such program may cover
22 all employments whether or not subject to any other pro-
23 visions of this Act but shall not cover employments excluded
24 by section 4 of the Act.

1 (b) To carry out his duties under subsection (a) of
2 this section, the Secretary may:

3 (1) Promote, encourage, or directly engage in
4 programs of studies, information and communication
5 concerning occupational safety and health statistics.

6 (2) Make grants to States or political subdivisions
7 thereof in order to assist them in developing and admin-
8 istering programs dealing with occupational safety and
9 health statistics.

10 (3) Arrange, through grants or contracts, for the
11 conduct of such research and investigations as give
12 promise of furthering the objectives of this section.

13 (c) The Federal share for each State grant under sub-
14 section (b) of this section may be up to 50 per centum of
15 the State's total cost.

16 (d) The Secretary may, with the consent of any State
17 or political subdivision thereof, accept and use the services,
18 facilities, and employees of the agencies of such State or
19 political subdivision, with or without reimbursement, in order
20 to assist him in carrying out his functions under this section.

21 (e) On the basis of the records made and kept pursuant
22 to section 9 (c) of this Act, employers shall file such reports
23 with the Secretary as he shall prescribe by regulation, as
24 necessary to carry out his functions under this Act.

1 (f) Agreements between the Department of Labor and
2 the States pertaining to the collection of occupational safety
3 and health statistics already in effect on the effective date
4 of this Act shall remain in effect until superseded by grants
5 or contracts made under this Act.

6 EFFECT ON OTHER LAWS

7 SEC. 25. (a) Nothing in this Act shall be construed or
8 held to supersede or in any manner affect any workmen's
9 compensation law or to enlarge or diminish or affect in any
10 other manner the common law or statutory rights, duties,
11 or liabilities of employers and employees under any law with
12 respect to injuries, occupational or other diseases, or death
13 of employees arising out of, or in the course of, employ-
14 ment.

15 (b) Nothing in this Act shall apply to working con-
16 ditions of employees with respect to whom other Federal
17 agencies, and State agencies acting under section 274 of
18 the Atomic Energy Act of 1954, as amended (42 U.S.C.
19 2021) exercise statutory authority to prescribe or enforce
20 standards or regulations affecting occupational safety or
21 health.

22 (c) The safety and health standards promulgated under
23 the Walsh Healey Public Contracts Act (41 U.S.C. 35 et
24 seq.), the Service Contract Act (41 U.S.C. 351 et seq.), and
25 the National Foundation on Arts and Humanities Act (20

1 U.S.C. 951 et seq.), are deemed repealed and rescinded on
2 the effective date of corresponding standards promulgated
3 under this Act, as determined by the Secretary of Labor to
4 be corresponding standards.

5 (d) Nothing in this Act shall apply to any employer
6 who is a contractor or subcontractor for construction, altera-
7 tion, and/or repair of buildings or works, including painting
8 or decorating in the regular course of his business.

9 (e) The Secretary shall, within three years after the
10 effective date of this Act, report to the Congress his recom-
11 mendations for legislation to avoid unnecessary duplication
12 and to achieve coordination between this Act and other Fed-
13 eral laws.

14 (f) Section 2 of the Act of August 9, 1969 (Public
15 Law 91-54; 83 Stat. 96), is hereby amended to read as
16 follows:

17 "SEC. 2. The first section and section 2 of the Act of
18 August 13, 1962, are each amended by inserting 'and Con-
19 struction Safety and Health' before 'standards' each time it
20 appears."

21 (g) Subsection 107 of Public Law 91-54 (83 Stat.
22 96) is amended to read as follows:

23 "SEC. 107. (a) (1) It shall be a condition of each con-
24 tract which is entered into under legislation subject to Reor-
25 ganization Plan Numbered 14 of 1950 (64 Stat. 1267),

1 and is for construction, alteration, and/or repair, including
2 painting and decorating, that no contractor or subcontractor
3 contracting for any part of the contract work shall require
4 any laborer or mechanic employed in the performance of the
5 contract to work in surroundings or under working conditions
6 which are unsanitary, hazardous, or dangerous to his health
7 or safety, as determined under construction safety and health
8 standards promulgated by the Secretary by regulation based
9 on proceedings pursuant to section 553 of title 5, United
10 States Code, provided that such proceedings include a hear-
11 ing of the nature authorized by said section. The Secretary
12 of Labor shall consult with the Advisory Committee on
13 Construction Safety and Health created by subsection (f)
14 and shall give due regard to the Committee's recommenda-
15 tions and information in framing proposed rules or subjects
16 and issues in setting standards in accordance with section
17 443 of title 5, United States Code.

18 “(2) Each employer as defined in section 3 (6) of the
19 Occupational Safety and Health Act who is a contractor or
20 subcontractor for construction, alteration, and or repair of
21 buildings or works, including painting and decorating in the
22 regular course of his business, shall comply with construction
23 safety and health standards promulgated under this section.”

24 (b) Subsection (b) of section 107 of Public Law 91-54
25 (83 Stat. 96) is amended to read as follows:

1 “(b) (1) The Secretary is authorized to make inspec-
2 tions and investigations pursuant to sections 9 (a), (c), and
3 (d) of the Occupational Safety and Health Act. If upon the
4 basis of inspection or investigation, the Secretary believes
5 that an employer subject to the provisions of section 107
6 (a) (2) has violated any health or safety standard promul-
7 gated under section 107 (a) of this Act, or has violated the
8 condition required of any contract to which subsection (a)
9 of this section applies, the Secretary shall issue a citation
10 to the employer unless the violation is de minimis. The
11 provisions of section 10 (except subsection (c) thereof)
12 of the Occupational Safety and Health Act shall apply to
13 citations issued under this Act. In issuing citations under this
14 Act, the Secretary shall issue each citation at the earliest
15 possible time from the occurrence of the alleged violation
16 but in no event later than forty-five days from the occurrence
17 of the alleged violation except that for good cause the Secre-
18 tary may extend such period up to a maximum of ninety
19 days from such occurrence. The provisions of section 12 of
20 the Occupational Safety and Health Act shall also apply to
21 this Act.

22 “(2) If, after notice and opportunity for hearing, the
23 Commission determines that a violation has occurred of any
24 condition prescribed by this section for a contract of the type
25 described in clause (1) or (2) of section 103 (a) of this

1 Act, the governmental agency for which the contract work
2 is done shall have the right to cancel the contract, and to
3 enter into other contracts for the completion of the contract
4 work, charging any additional cost to the original contractor.
5 If, after notice and opportunity for hearing, the Commission
6 determines that a violation has occurred of any condition
7 prescribed by this section for a contract of the type described
8 in clause 3 of section 103 (a), the governmental agency by
9 which financial guarantee, assistance, or insurance for the
10 contract work is provided shall have the right to withhold
11 any such assistance attributable to the performance of the
12 contract. Section 104 of this Act shall not apply to the en-
13 forcement of this section."

14 (i) Subsection (c) of section 107 of Public Law 91-54
15 (83 Stat. 96) is hereby repealed and subsection (d) of that
16 section is redesignated as subsection "(c)" and is amended
17 to read as follows:

18 "(c) (1) If the Commission determines on the record
19 after an opportunity for hearing that by repeated willful or
20 grossly negligent violations of this Act, a contractor or sub-
21 contractor has demonstrated that the provisions of subsec-
22 tion (b) of this section and actions by the Secretary under
23 paragraph (3) of this subsection are not effective to protect
24 the safety and health of his employees, the Commission shall
25 make a finding to that effect and shall, not sooner than thirty

1 days after giving notice of the findings to all interested per-
2 sons, transmit the name of such contractor or subcontractor
3 to the Comptroller General.

4 “(2) The Comptroller General shall distribute each
5 name so transmitted to him to all agencies of the Government.
6 Unless the Commission otherwise recommends, no contract
7 subject to this section shall be awarded to such contractor or
8 subcontractor or to any person in which such contractor or
9 subcontractor has a substantial interest until three years have
10 elapsed from the date the name is transmitted to the Comp-
11 troller General. If, before the end of such three-year period,
12 the Commission, after affording interested persons due notice
13 and opportunity for hearing, is satisfied that a contractor or
14 subcontractor whose name he has transmitted to the Comp-
15 troller General will thereafter comply responsibly with the
16 requirements of this section, the Commission shall terminate
17 the application of the preceding sentence to such contractor
18 or subcontractor (and to any person in which the contractor
19 or subcontractor has a substantial interest); and when the
20 Comptroller General is informed of the Commission's action
21 he shall inform all agencies of the Government thereof.

22 “(3) Any person aggrieved by an action of the Commis-
23 sion under subsections (b) or (c) of this section may seek
24 a review of such action in the appropriate United States
25 Court of Appeals pursuant to the provisions of section 13 (a)

1 of the Occupational Safety and Health Act. The Secretary
2 may also obtain judicial review or seek enforcement as pro-
3 vided in sections 13 (a) and 13 (c) and (d), and section
4 14 of the Occupational Safety and Health Act."

5 (j) Section 107 of Public Law 91-54 (83 Stat. 96) is
6 amended by adding a new subsection "(d)" immediately
7 after the new section "(c)". Subsection (e) of section 107
8 of Public Law 91-54 (83 Stat. 96) is hereby redesignated
9 as subsection "(f)" and subsection (f) of section 107 of
10 Public Law 91-54 (83 Stat. 96) is accordingly redesignated
11 as subsection "(g)". The new subsection "(d)" shall read
12 **as follows:**

13 "(d) (1) Any employer who willfully or repeatedly
14 violates the standards promulgated by the Secretary under
15 section 107 (a) of this Act, may be assessed a civil penalty
16 of not more than \$10,000 for each violation.

17 "(2) Any citation for a serious violation of the stand-
18 ards promulgated by the Secretary under section 107 (a) of
19 this Act shall include a proposed penalty of up to \$1,000
20 for each such violation.

21 "(3) Any employer who violates the standards pro-
22 mulgated by the Secretary under section 107 (a) of this
23 Act and such violation is specifically determined by the
24 Secretary not to be of a serious nature, the Secretary may

1 include in the citation issued for such a violation a proposed
2 penalty of up to \$1,000 for each such violation.

3 “(4) Any employer who violates any order or cita-
4 tion which has become final in accordance with the
5 provisions of section 10 of the Occupational Safety and
6 Health Act may be assessed a penalty of up to \$1,000 for
7 each such violation. When such violation is of a continuing
8 nature, each day during which it continues shall constitute
9 a separate offense for the purpose of assessing the penalty
10 except where such order or citation is pending review under
11 section 11 of the Occupational Safety and Health Act.

12 “(5) Any employer who violates any of the posting
13 requirements, as prescribed in section 10 (e) of the Occupa-
14 tional Safety and Health Act, shall be assessed by the Com-
15 mission a civil penalty of up to \$1,000 for each such
16 violation.

17 “(6) Any person who discharges or in any other man-
18 ner discriminates against any employee because such em-
19 ployee has filed any complaint or instituted or caused to be
20 instituted any proceeding under or related to this Act, or
21 has testified or is about to testify in any such proceeding,
22 shall be assessed a civil penalty by the Commission of up
23 to \$10,000. Such person may also be subject to a fine of

1 not more than \$10,000 or imprisonment of a period not to
2 exceed ten years, or both.

3 “(7) Any person who forcibly assaults, resists, op-
4 poses, impedes, intimidates, or interferes with any person
5 while engaged in or on account of the performance of inspec-
6 tions or investigatory duties under this Act shall be fined
7 not more than \$5,000 or imprisoned not more than three
8 years, or both. Whoever, in the commission of any such acts,
9 uses a deadly or dangerous weapon, shall be fined not more
10 than \$10,000 or imprisoned not more than ten years or
11 both. Whoever kills a person while engaged in or on account
12 of the performance of inspecting or investigating duties un-
13 der this Act shall be punished by imprisonment for any term
14 of years or for life.

15 “(8) The Commission shall have authority to assess
16 and collect all penalties provided in this section, giving due
17 consideration to the appropriateness of the penalty with re-
18 spect to the size of the business being charged, the gravity
19 of the violation, the good faith of the employer, and the his-
20 tory of previous violations.

21 “(9) For the purpose of this subsection a serious viola-
22 tion shall be deemed to exist in a place of employment if
23 there is a substantial probability that death or serious physi-
24 cal harm could result from a condition which exists, or from
25 one or more practices, means, methods, operations, or proc-

1 esses which have been adopted or are in use, in such place
2 of employment unless the Secretary determines that the em-
3 ployer did not, and could not with the exercise of reasonable
4 diligence, know of the presence of the violation."

5 AUDITS

6 Sec. 26. (a) Each recipient of a grant under this Act
7 shall keep such records as the Secretary shall prescribe, in-
8 cluding records which fully disclose the amount and disposi-
9 tion by such recipient of the proceeds of such grant, the
10 total cost of the project or undertaking in connection with
11 which such grant is made or used, and the amount of that
12 portion of the cost of the project or undertaking supplied by
13 other sources, and such other records as will facilitate an ef-
14 fective audit.

15 (b) The Secretary and the Comptroller General of the
16 United States, or any of their duly authorized representa-
17 tives, shall have access for the purpose of audit and examina-
18 tion to any books, documents, papers, and records of the
19 recipients of any grant under this Act that are pertinent
20 to any such grant.

21 REPORTS

22 SEC. 27. Within one hundred and twenty days follow-
23 ing the convening of each regular session of each Congress,
24 the Secretary and the Secretary of Health, Education, and
25 Welfare shall each prepare and submit to the President for

transmittal to the Congress a report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of occupational safety and health, and any other relevant information, and including any recommendations to effectuate the purposes of this Act.

OBSERVANCE OF RELIGIOUS BELIEFS

SEC. 28. Nothing in this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such medical examination, immunization, or treatment is necessary for the protection of the health or safety of others.

APPROPRIATIONS

SEC. 29. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

SEC. 30. This Act shall take effect one hundred and twenty days after the date of its enactment.

SEPARABILITY

SEC. 31. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Calendar No. 1300

91ST CONGRESS }
2d Session }

SENATE

{ REPORT
No. 91-1282

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

OCTOBER 6—(legislative day, OCTOBER 5), 1970.—Ordered to be printed

Mr. WILLIAMS of New Jersey, from the Committee on Labor and Public Welfare, submitted the following

REPORT

together with

INDIVIDUAL AND MINORITY VIEWS

[To accompany S. 2193]

The Committee on Labor and Public Welfare, to which was referred the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women, to assist and encourage States to participate in efforts to assure such working conditions, to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 2193 is to reduce the number and severity of work-related injuries and illnesses which, despite current efforts of employers and government, are resulting in ever-increasing human misery and economic loss.

The bill would achieve its purpose through programs of research, education and training, and through the development and administration, by the Secretary of Labor, of uniformly applied occupational safety and health standards. Such standards would be developed with the assistance of the Secretary of Health, Education and Welfare, and both their promulgation and their enforcement would be judicially reviewable. Encouragement is given to Federal-state cooperation, and financial assistance is authorized to enable states, under approved plans, to take over entirely and administer their own programs for achieving safe and healthful jobsites for the Nation's workers.

BACKGROUND

The problem of assuring safe and healthful workplaces for our working men and women ranks in importance with any that engages the national attention today.

As former Secretary of Labor Shultz pointed out during the hearings on this bill, 14,500 persons are killed annually as a result of industrial accidents; accordingly, during the past four years more Americans have been killed where they work than in the Vietnam war. By the lowest count, 2.2 million persons are disabled on the job each year, resulting in the loss of 250 million man days of work—many times more than are lost through strikes.

In addition to the individual human tragedies involved, the economic impact of industrial deaths and disability is staggering. Over \$1.5 billion is wasted in lost wages, and the annual loss to the Gross National Product is estimated to be over \$8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation benefits and medical expenses.

This "grim current scene," Secretary Shultz further pointed out, represents a worsening trend for the fact is that the number of disabling injuries per million man hours worked is today 20% higher than in 1958. The knowledge that the industrial accident situation is deteriorating, rather than improving, underscores the need for action now.

In the field of occupational health the view is particularly bleak, and, due to the lack of information and records, may well be considerably worse than we currently know.

Occupational diseases which first commanded attention at the beginning of the Industrial Revolution are still undermining the health of workers. Substantial numbers, even today, fall victim to ancient industrial poisons such as lead and mercury. Workers in the dusty trades still contract various respiratory diseases. Other materials long in industrial use are only now being discovered to have toxic effects. In addition, technological advances and new processes in American industry have brought numerous new hazards to the workplace. Carcinogenic chemicals, lasers, ultrasonic energy, beryllium metal, epoxy resins, pesticides, among others, all present unquiet threats to the health of workers. Indeed, new materials and processes are being introduced into industry at a much faster rate than the present meager resources of occupational health can keep up with. It is estimated that every 20 minutes a new and potentially toxic chemical is introduced into industry. New processes and new sources of energy present occupational health problems of unprecedented complexity.

Recent scientific knowledge points to hitherto unsuspected cause-and-effect relationships between occupational exposures and many of the so-called chronic diseases: cancer, various respiratory ailments, allergies, heart disease, and others. In some instances, the relationship appears to be direct; asbestos, ionizing radiation, chromates, and certain dye intermediates, among others, are directly involved in the genesis of cancer. In other cases, occupational exposures are implicated as contributory factors. The distinction between occupational and non-occupational illnesses is growing increasingly difficult to define.

In 1960-67, the Surgeon General of the United States studied six metropolitan areas, examining 1,700 industrial plants which employed

142,000 workers. The study found that 65 percent of the people were potentially exposed to harmful physical agents, such as severe noise or vibration, or to toxic materials. The Surgeon General further examined controls that were in effect to protect workers from such hazards, and found that only 25 percent of the workers were adequately covered.

California, a state with more rigorous occupational safety and health reporting procedures than most, showed 27,000 occupational diseases in 1964, a rate of 4.8 per 1,000 workers. Projected nationally, there were an estimated 336,000 cases of occupational diseases that year, a figure which by all indications continues to grow. Based on limited reporting experience, the Public Health Service now indicates that there are 390,000 new occurrences of occupational disease each year.

Studies of particular industries provide specific emphasis regarding the magnitude of the problem. For example, despite repeated warnings over the years from other countries that their cotton workers suffered from lung disease, it is only within the past decade that we have recognized byssinosis as a distinct occupational disease among workers in American cotton mills. Recent studies now show that this illness, caused by the dust generated in the processing of cotton, and resulting in continuous shortness of breath, chronic cough and total disablement, affects substantial percentages of cotton textile workers. In some states as many as 30% of those in the carding or spinning rooms have been affected, and it has been estimated that as many as 100,000 active or retired workers currently suffer from this disease.

Asbestos is another material which continues to destroy the lives of workers. For 40 years it has been known that exposure to asbestos caused the severe lung scarring called asbestosis. Nevertheless, as an eminent physician and researcher, Dr. Irving J. Selikoff, testified during the hearings on this bill:

It is depressing to report, in 1970 that the disease that we knew well 40 years ago is still with us just as if nothing was ever known.

It has also since been found that manufacturing and construction workers exposed to asbestos suffer disproportionately from pulmonary cancer and mesothelioma. Because nothing has been done about the hazards of asbestos, even after the association of asbestos and lung cancer was first reported in 1935, 20,000 out of the 50,000 workers who have since entered one asbestos trade alone—insulation work—are likely to die of asbestosis, lung cancer or mesothelioma. Nor is the potential hazard confined to these workers, since it is estimated that as many as 3.5 million workers are exposed to some extent to asbestos fibers, as are many more in the general population.

Pesticides, herbicides and fungicides used in the agricultural industry have increasingly become recognized as a particular source of hazard to large numbers of farmers and farmworkers. One of the major classifications of agricultural chemicals—the organophosphates—has a chemical similarity to commonly used agents of chemical and biological warfare, and exposure, depending on degree, causes headache, fever, nausea, convulsions, long-term psychological effects, or death. Another group—the chlorinated hydrocarbons—are

stored in fatty tissues of the body, and have been identified as causing mutations, sterilization, and death.

While the full extent of the effect that such chemicals have had upon those working in agriculture is totally unknown, an official of the Department of Health, Education, and Welfare stated, during hearings of the Migratory Labor Subcommittee, that an estimated 800 persons are killed each year as a result of improper use of such pesticides, and another 80,000 injured. Despite the unmistakable danger that these substances present, no effective controls presently exist over their safe use and no effective protections against toxic exposure of farmworkers or others in the rural populace.

Although many employers in all industries have demonstrated an exemplary degree of concern for health and safety in the workplace, their efforts are too often undercut by those who are not so concerned. Moreover, the fact is that many employers—particularly smaller ones—simply cannot make the necessary investment in health and safety, and survive competitively, unless all are compelled to do so. The competitive disadvantage of the more conscientious employer is especially evident where there is a long period between exposure to a hazard and manifestation of an illness. In such instances a particular employer has no economic incentive to invest in current precautions, not even in the reduction of workmen's compensation costs, because he will seldom have to pay for the consequences of his own neglect.

Nor has state regulation proven sufficient to the need. No one has seriously disputed that only a relatively few states have modern laws relating to occupational health and safety and have devoted adequate resources to their administration and enforcement. Moreover, in a state-by-state approach, the efforts of the more vigorous states are inevitably undermined by the shortsightedness of others. The inadequacy of anything less than a comprehensive, nationwide approach has been exemplified by experience with the chemical betanaphthylamine—a chemical so toxic that any exposure at all is likely to cause the development of bladder cancer over a period of years. The Commonwealth of Pennsylvania discovered this extreme effect of betanaphthylamine and banned its use, manufacture, storage or handling in that State, but production of this lethal chemical has begun in another State where legislation is inadequate. The exposure of workers to betanaphthylamine continues today.

In sum, the chemical and physical hazards which characterize modern industry are not the problem of a single employer, a single industry, nor a single state jurisdiction. The spread of industry and the mobility of the workforce combine to make the health and safety of the worker truly a national concern.

☐ Citing technological progress as a mixed blessing in a message to Congress on August 6, 1969, President Nixon urged the passage of a comprehensive occupational safety and health bill. The President stated:

The same new method or new product which improves our lives can also be the source of unpleasantness and pain. For man's capacity to innovate is not always matched by his ability to understand his innovations fully, to use them properly, or to protect himself against unforeseen consequences of the changes he creates.

The side effects of progress present special dangers in the workplaces of our country. For the working man and woman, the by-products of change constitute an especially serious threat. Some efforts to protect the safety and health of the American worker have been made in the past both by private industry and by all levels of government. But new techniques have moved even faster to create newer dangers. Today we are asking our workers to perform far different tasks from those they performed five of fifteen or fifty years ago. It is only right that the protection we give them is also up to date.

COMMITTEE CONSIDERATION

S. 2193 was introduced on May 16, 1969, by Senator Williams of New Jersey, for himself, Senator Yarborough, Senator Mondale, and Senator Kennedy. An Administration bill, S. 2788, was introduced by Senator Javits on August 6, 1969.

The Subcommittee on Labor held nine days of hearings in Washington, D.C., on September 30, November 4, November 21, November 24, November 26, December 9, December 15, December 16, 1969, and May 5, 1970. In addition, hearings were held in Jersey City, New Jersey, on March 7, 1970; in Duquesne, Pennsylvania, on April 10, 1970; and in Greenville, South Carolina, on April 28, 1970.

Testimony was presented by the then Secretary of Labor, George P. Shultz, and by Dr. Roger G. Edgeberg, Assistant Secretary of the Department of Health, Education, and Welfare for Health and Scientific Affairs. Numerous other witnesses also testified, including industry spokesmen, officials of labor organizations, representatives of professional associations, and individual workers.

S. 2193 was reported by the Subcommittee on Labor, with an amendment in the nature of a substitute, on September 9, 1970, after two executive sessions. Following three executive sessions, the Committee on Labor and Public Welfare ordered the bill reported on September 25, 1970.

MAJOR PROVISIONS OCCUPATIONAL SAFETY AND HEALTH STANDARDS

S. 2193 would require every employer subject to the Act to comply with occupational safety and health standards promulgated by the Secretary of Labor in accordance with procedures provided in section 6. Those procedures are as follows:

Consensus Standards, Established Federal Standards, Proprietary Standards. Within two years after enactment, the Secretary would be required by section 6(a), to promulgate all national consensus standards and all established Federal standards unless he determines that a standard would not result in improved safety or health for all or some of the affected employees. If there is a conflict among standards, the Secretary shall promulgate that which assures the greatest protection for the affected employees.

During this two-year period, the Secretary has discretion to promulgate any standard which has been adopted by a nationally recognized standards-producing organization by other than a consensus method, provided that such standard has been adopted on or before the enactment of this act.

The purpose of this procedure is to establish as rapidly as possible national occupational safety and health standards with which industry is familiar. These standards may not be as effective or as up-to-date as is desirable, but they will be useful for immediately providing a nationwide minimum level of health and safety.

Two private organizations are the major sources of consensus standards: the American National Standards Institute, Inc., and the National Fire Protection Association. Since, by the Act's definition, a "consensus standard" is one which has been adopted under procedures which have given diverse views an opportunity to be considered and which indicate that interested and affected persons have reached substantial agreement on its adoption, it is appropriate to permit the Secretary to promulgate such standards without regard to the provisions of the Administrative Procedure Act.

The bill also provides for the issuance in similar fashion of those standards which have been issued under other Federal statutes and which under this act may be made applicable to additional employees who are not under the protection of such other Federal laws. Such standards have already been subjected to the procedural scrutiny mandated by the law under which they were issued; such standards, moreover, in large part, represent the incorporation of voluntary industrial standards.

The committee has also concluded that the Secretary should be able to make use of so-called proprietary standards which have been produced by various industrial and professional groups, such as the American Conference of Governmental Industrial Hygienists, the Manufacturing Chemists Association, and the National Electrical Manufacturers Association. Such standards have gained wide acceptance by American industry. However, since they were not adopted by their associations with the same procedural limitations applicable to consensus standards, the committee has provided that the Secretary must afford interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments before making such standards effective.

Promulgation, Revision and Revocation of Standards.—The consensus and other standards issued under section 6(a) would provide a sound foundation for a national safety and health program. However, as a recent Department of Labor study has shown, a large proportion of the voluntary standards are seriously out-of-date. Many represent merely the lowest common denominator of acceptance by interested private groups. Accordingly, it is essential that such standards be constantly approved and replaced as new knowledge and techniques are developed. In addition, there are many occupational hazards—particularly those affecting health—which are not covered by any standards at all. Section 6(b) sets forth the procedures by which the promulgation of new standards, and the revision and revocation of adopted standards, are to be accomplished.

The Secretary may initiate such proceedings by the appointment of an advisory committee, which would have 90 days, or such shorter or longer period not to exceed 270 days, as the Secretary may prescribe, to submit its recommendations. Where an advisory committee has been appointed, publication of proposed standards would be made in the Federal Register within 60 days of receipt of the advisory committee's recommendations.

The Secretary may elect to dispense with an advisory committee—particularly where the subject matter is noncontroversial—and simply begin the procedure by publishing proposed standards in the Federal Register. In either case, the Secretary would afford interested persons a period of 30 days after publication to submit data or comments, and to request a public hearing on any objections.

If written objection is made to the Secretary's proposal, and a hearing requested, the Secretary would then publish a notice specifying the objections made and setting a time and place for hearing. Such hearing would be of the informal type authorized for rulemaking by the Administrative Procedure Act. Within 60 days after completion of any such hearing, the Secretary would issue a rule promulgating, modifying, or revoking a standard or group of standards dealing with the occupational safety or health issue which had been the subject of the proceeding. Under section 6(b)(4), the rule issued may contain a provision delaying its effective date for such a period as the Secretary determines necessary. For example, it may be necessary to delay the effective date of a standard to permit affected employers and employees to familiarize themselves with its requirements. In providing for a delayed effective date, however, the Secretary must be assured of the need to grant such a delay.

Standards promulgated under this procedure would include requirements regarding the use of labels or other forms of warning to alert employees to the hazards covered by the standard and to provide them with necessary information regarding proper methods of use or exposure and appropriate emergency treatment, where appropriate, such standards would also prescribe protective equipment and other control measures, as well as, in the case of toxic substances or harmful physical agents, requirements for monitoring conditions or measuring employee exposure as may be necessary to protect employees' health. In addition, where exposure to potentially toxic substances or harmful physical agents is involved, the standard may prescribe medical examinations of employees when it is necessary to determine whether such exposure is having or is likely to have adverse effects on health.

The committee intends that standards promulgated under section 6(b) shall represent feasible requirements, which, where appropriate, shall be based on research, experiments, demonstrations, past experience, and the latest available scientific data. Such standards should be directed at assuring, so far as possible, that no employee will suffer impaired health or functional capacity, or diminished life expectancy, by reason of exposure to the hazard involved, even though such exposure may be over the period of his entire working life. Insofar as practicable, standards are to be expressed in terms of objective criteria and the performance desired.

Emergency Standards.—Because of the obvious need for quick response to new health and safety findings, section 6(c) mandates the Secretary to promulgate temporary emergency standards if he finds that such a standard is needed to protect employees who are being exposed to grave dangers from potentially toxic materials or harmful physical agents, or from new hazards for which no applicable standard has been promulgated. Upon publication of such an emergency temporary standard, the Secretary must begin a regular standard-setting procedure for such hazard, which proceeding must be completed within six months.

Variances. Section 6(d) provides that any affected employer may apply to the Secretary for a variance from a standard otherwise applicable to him. Affected employees must be notified of the application and afforded an opportunity to participate in a hearing. To receive a variance, the employer must demonstrate by a preponderance of evidence in the record that he will provide to his employees employment which is as safe and healthful as would prevail if he complied with the standard.

Judicial Review of Standards. Section 6(f) provides that any person who may be adversely affected by a standard may, within 60 days of its issuance, seek judicial review in an appropriate United States court of appeals. While this would be the exclusive method for obtaining pre-enforcement judicial review of a standard, the provision does not foreclose an employer from challenging the validity of a standard during an enforcement proceeding. Unless otherwise ordered by the court, the filing of the petition would not operate as a stay of the standard.

The Proposal for an Occupational Safety and Health Board.—The committee considered and rejected a proposal to have an independent five-member Board promulgate standards, rather than the Secretary of Labor. The chief arguments supporting this proposal were that (1) the Board would represent expertise in the field of occupational safety and health, and (2) the Board would represent a separation of powers between standards-setting and enforcement.

The committee agrees that professional and technical expertise must be involved in the development and promulgation of a standard, but such expertise would be fully available to the Secretary, both as members of his staff, and as members of advisory committees.

Rather than dividing responsibility by creating yet another agency, the committee believes that a sounder program will result if responsibility for the formulation of rules is assigned to the same administrator who is also responsible for their enforcement and for seeing that they are workable and effective in their day-to-day application, thus permitting cohesive administration of a total program. In the committee's view, the question of separation of power is not so much one of whether the Secretary should be separated from the power to set standards, but whether he should be separated from the power to administer an integral program, and from the power of the Congress and the public to hold him accountable for the overall implementation of that program.

It should be emphasized that regulatory statutes have customarily accorded the administering agency overall authority for formulating and enforcing regulations—including a number of executive departments or subordinate administrations responsible for other types of safety programs. Indeed, in establishing these existing safety programs which cover the most hazardous occupations, such as mining and coalmining, as well as the various safety programs applicable to Federal contractors, the Congress has placed both standards-setting and enforcement responsibilities in the same agency. The committee believes it equally appropriate that this approach be followed in the present instance.

ADVISORY COMMITTEES

Two kinds of advisory committees are authorized. One is the ad hoc advisory committee which the Secretary may appoint to assist in the development of a standard or group of standards.

Section 7(b) provides that the ad hoc advisory committees shall consist of not more than 15 members, and shall include one or more designees of the Secretary of Health, Education, and Welfare. Such a committee may also include an equal number of persons qualified by experience and affiliation to present the views of employers and of employees, as well as one or more representatives of State health and safety agencies, representatives of professional organizations specializing in occupational health or safety, and representatives of nationally recognized standards-producing organizations. In order to insure a balanced view between government and non-government members and to preserve the guarantee of a public interest orientation, the number of non-government persons appointed to any advisory committee shall not exceed the number of representatives of Federal and State agencies who are appointed.

In addition to the ad hoc advisory committees, the Secretary and the Secretary of Health, Education, and Welfare shall appoint a National Advisory Committee of 20 members divided between representatives of management, labor and occupational safety and health professions. The Secretary shall appoint all members to the committee, except for the occupational health representatives who are to be appointed by the Secretary of Health, Education, and Welfare. The Advisory Committee has an important role to perform in bringing continuing public attention and interest to bear on the act and on its programs. Its membership should be chosen with great care and should be widely representative.

GENERAL DUTY

The committee recognizes that precise standards to cover every conceivable situation will not always exist. This legislation would be seriously deficient if any employee were killed or seriously injured on the job simply because there was no specific standard applicable to a recognized hazard which could result in such a misfortune. Therefore, to cover such circumstances the committee has included a requirement to the effect that employers are to furnish employment and places of employment which are free from recognized hazards to the health and safety of their employees.

The committee has concluded that such a provision is based on sound and reasonable policy. Under principles of common law, individuals are obliged to refrain from actions which cause harm to others. Courts often refer to this as a general duty to others. Statutes usually increase but sometimes modify this duty. The committee believes that employers are equally bound by this general and common duty to bring no adverse effects to the life and health of their employees throughout the course of their employment. Employers have primary control of the work environment and should insure that it is safe and healthful. Section 5(a), in providing that employers must furnish employment "which is free from recognized hazards so as to provide safe and healthful working conditions," merely restates that each employer shall furnish this degree of care.

There is a long-established statutory precedent in both Federal and State law to require employers to provide a safe and healthful place of employment. Over 30 states have provisions of this type, and at least three Federal laws contain similar clauses, including the Wash-Herley Public Contracts Act, the Service Contract Act, and the Longshoremen's and Harbor Workers' Act.

The general duty clause in this bill would not be a general substitute for reliance on standards, but would simply enable the Secretary to insure the protection of employees who are working under special circumstances for which no standard has yet been adopted. Moreover, the clause merely requires an employer to correct recognized hazards after they have been discovered on inspection and made the subject of an abatement order. There is no penalty for violation of the general duty clause. It is only if the employer refuses to correct the unsafe condition after it has been called to his attention and made the subject of an abatement order that a penalty can be imposed. Before that is done, the employer would be entitled to a full administrative hearing, followed by judicial review, if he disagrees that the situation in question is unsafe.

The need for such a clause was strongly urged by Governor Howard Pyle, President of the National Safety Council, in testimony before the Subcommittee on Labor on December 9, 1969. Governor Pyle stated:

If national policy finally declares that all employees are entitled to safe and healthful working conditions, then all employers would be obligated to provide a safe and healthful workplace rather than only complying with a set of promulgated standards. The absence of such a general obligation provision would mean the absence of authority to cope with a hazardous condition which is obvious and admitted by all concerned for which no standard has been promulgated.

OBLIGATIONS OF EMPLOYEES

The committee recognizes that accomplishment of the purposes of this bill cannot be totally achieved without the fullest cooperation of affected employees. In this connection, Section 5(b) expressly places upon each employee the obligation to comply with standards and other applicable requirements under the act.

It should be noted, too, that studies of employee motivation are among the research efforts which the committee expects to be undertaken under section 18, and it is hoped that such studies, as well as the programs for employee and employer training authorized by section 18(f), will provide the basis for achieving the fullest possible commitment of individual workers to the health and safety efforts of their employers. It has been made clear to the committee that the most successful plant safety programs are those which emphasize employee participation in their formulation and administration; every effort should therefore be made to maximize such participation throughout industry.

The committee does not intend the employee-duty provided in section 5(b) to diminish in any way the employer's compliance responsibilities or his responsibility to assure compliance by his own employees.

Final responsibility for compliance with the requirements of this act remains with the employer.

INSPECTIONS AND INVESTIGATIONS

In order to carry out an effective national occupational safety and health program, it is necessary for government personnel to have the right of entry in order to ascertain the safety and health conditions and status of compliance of any covered employing establishment. Section 8(a) therefore authorizes the Secretary or his representative, upon presenting appropriate credentials, to enter at reasonable times the premises of any place of employment covered by this act, to inspect and investigate within reasonable limits all pertinent conditions, and also to privately question owners, operators, agents or employees.

During the field hearings held by the Subcommittee on Labor, the complaint was repeatedly voiced that under existing safety and health legislation, employees are generally not advised of the content and results of a Federal or State inspection. Indeed, they are often not even aware of the inspector's presence and are thereby deprived of an opportunity to inform him of alleged hazards. Much potential benefit of an inspection is therefore never realized, and workers tend to be cynical regarding the thoroughness and efficacy of such inspections. Consequently, in order to aid in the inspection and provide an appropriate degree of involvement of employees themselves in the physical inspections of their own places of employment, the committee has concluded that an authorized representative of employees should be given an opportunity to accompany the person who is making the physical inspection of a place of employment under section 9(a). Correspondingly, an employer should be entitled to accompany an inspector on his physical inspection, although the inspector should have an opportunity to question employees in private so that they will not be hesitant to point out hazardous conditions which they might otherwise be reluctant to discuss.

Although questions may arise as to who shall be considered a duly authorized representative of employees, the bill provides the Secretary of Labor with authority to promulgate regulations for resolving this question. Where the Secretary is not able to determine the existence of any authorized representative of employees, section 8(e) provides that the inspector shall consult with a reasonable number of employees concerning matters of health and safety in the workplace. It is expected that such consultation shall be undertaken with a view both to apprising the inspector of all possible hazards to be found in the workplace, as well as to insure that employees generally will be informed of the inspector's presence and the purpose and manner of his inspection.

In order that employees will be informed of any violation found by the inspector, section 10 specifies that citations shall be prominently posted near the place where the violation occurred. In addition, section 8(f)(2) provides that employees or a representative of employees may, before or during an inspection, give written notification to the Secretary or an inspector of any violation which they believe exists, and such employees or representative of employees shall be provided with a written explanation when no citation is issued respecting such alleged violation. The Secretary must also establish informal review

procedures for use of employees or employee representatives who wish to question further the refusal to issue a citation.

A further provision, section 8 f (1), entitles employees or a representative of employees who believe that a health or safety violation exists which threatens physical harm or that an imminent danger exists, to request a special inspection by giving notification to the Secretary, setting forth the basis of the request. If the Secretary determines upon receipt of the notification that there are reasonable grounds to believe that a violation or imminent danger exists, he shall make a special inspection as soon as practicable. If the Secretary determines there are no reasonable grounds to believe that a violation or imminent danger exists he shall so notify in writing those making the request.

By requiring that the special inspection be made "as soon as practicable," the committee contemplates that the Secretary, in scheduling the special inspection, will take into account such factors as the degree of harmful potential involved in the condition described in the request and the urgency of competing demands for inspectors arising from other requests or regularly scheduled inspections.

While the bill provides that a request for a special inspection shall be reduced to writing, the committee intends that notification may first be made by telephone, and that where an immediate harm is threatened, such as in an imminent danger situation, the Secretary should not await receipt through the mail of the written notification before beginning his inspection.

In recognition of the possibility of limited inspection manpower in the earlier phases of the program, the committee expects that the Secretary will initially place emphasis on inspections in those industries or occupations where the need to assure safe and healthful conditions is determined to be the most compelling.

In addition to the inspection authority, Section 8(b) grants the Secretary of Labor a subpoena power over books, records and witnesses—a power which is customary and necessary for the proper administration and enforcement of a statute of this nature.

The committee, bearing in mind that the number of inspections which it would be desirable to have made will undoubtedly, for an unforeseeable period, exceed the capacity of the inspection force, has incorporated a further provision, authorizing the Secretary to adopt regulations obliging employers to conduct periodic inspections to determine their own state of compliance with applicable health and safety requirements, and to certify the results of such inspections to the Secretary. Such a procedure could well provide a valuable, and probably indispensable, supplement to the Secretary's own inspections, since it would cause an employer regularly to review conditions in the workplace which might otherwise be ignored between official inspections. False certifications of compliance by the employer would subject the employer to penalties if such falsity were later established.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

When an inspector finds, as the result of an employee complaint or otherwise, that there exists an "imminent danger"—defined in section 10(a) as "a condition or practice which could reasonably be expected to cause death or serious physical harm before such condition

or practice can be abated"—delay in taking necessary action can plainly mean the difference between life and death. In almost all such cases, employers recognize the gravity of the danger and voluntarily take the necessary steps, including withdrawing workers from a particular machine or process. Where this is not done, however, it is imperative that there be Governmental authority available to require the appropriate actions.

Section 11(a) provides that in these imminent danger situations, the Secretary may bring action in the appropriate United States district court for a temporary restraining order or an injunction requiring steps to be taken to correct, remove, or avoid the danger, and prohibiting the presence of individuals where the imminent danger exists. However, the bill authorizes the continued presence of individuals necessary to the correction or removal of the danger or to maintain the capacity of a continuous process operation to restart without a complete cessation of operations, and to permit any necessary shutdown of operations to be accomplished in a safe and orderly manner.

Where the Secretary determines that the danger of death or serious harm is so immediate that action must be taken without awaiting the institution of court proceedings, he may order such action to be taken and his order may remain in effect for 72 hours. Section 11(b) specifies that in delegating to an inspector his authority to issue imminent danger orders, the Secretary shall require the inspector to obtain the concurrence of an appropriate regional Labor Department official before such an order is issued. The committee adopted this qualification in order to meet the concern expressed by some that it should not be within the sole judgment of a single inspector to determine whether a hazard is so imminent as to warrant interference with a production operation. The bill now provides that an additional judgment shall be obtained; however, bearing in mind the act's purpose to protect fully employees whose lives and health may be under immediate risk, it is intended that the necessary concurrence may be obtained by telephone consultation rather than more protracted means. In order that difficulties of communication will not thwart the act's purpose by delaying the issuance of an order, it is expected that the Secretary will make suitable provision to insure that persons authorized to provide such concurrence can be reached by telephone at all times. The bill further specifies that once an imminent danger order has been issued, the employer, without postponing its mandatory effect, may obtain expeditious informal reconsideration within the Department of Labor, in accordance with procedures to be prescribed by the Secretary.

The committee believes that objections to authorizing the Secretary of Labor to issue imminent danger orders have been greatly overstated in public discussion of this legislation. The safety laws of at least 35 states authorize administrative officials to deal with imminent danger situations. Such "red tag" or "stop work" provisions typically empower the appropriate state agency to post a notice or issue an order prohibiting the use of machinery, equipment or work areas found to be dangerous, and the committee has learned of no instance in which such provisions have been invoked unreasonably. It may also be noted that similar authority is provided in both the Coal Mine Health and Safety Act of 1969 and the recently passed Railroad Safety Act.

CITATIONS FOR VIOLATIONS

Section 9 provides that if upon inspection or investigation, the Secretary determines that an employer has violated certain provisions of the act, or a rule, regulation or order issued under one of those sections, he shall forthwith issue a citation to the employer. Such citation, which provides the basis for subsequent enforcement procedures, shall be in writing, shall describe the particulars of the violation, and shall fix a reasonable time for abatement of the violation. A copy of the citation shall be posted at or near each place of violation, in accordance with regulations of the Secretary.

It should be made clear that the language of section 9 does not limit the issuance of citations to those violations which the inspector has himself witnessed. It is the committee's intent that if an investigation should disclose that violations have occurred, even though since corrected, a citation may be issued in appropriate cases.

The committee recognizes that many violations will be found on inspection which will not warrant the issuance of a citation or subsequent enforcement proceedings. Accordingly, section 9 provides that the Secretary may prescribe procedures for the issuance of a notice in lieu of a citation when the inspector finds *de minimis* violations which have no direct or immediate relationship to safety or health. The committee intends that the notice given by the Secretary should detail the conditions and circumstances of the violation and prescribe the means for correcting it. However, no penalties would attach to a violation covered by such a notice.

PROCEDURES FOR ENFORCEMENT

Section 10 provides that if the Secretary issues a citation for a violation, he shall, within a reasonable time, notify the employer by certified mail of any penalty (as provided in section 14) proposed to be assessed. It is intended that such notice should be sent as promptly as possible, taking into account the need to give consideration to the various factors required to be weighed in assessing penalties.

The Secretary's notice must also advise the employer that he has 15 working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If the employer does not file such a notice within that time period, the citation and proposed penalty become final.

Similarly, if the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has previously issued, during the time permitted for correction, or has failed to comply with an imminent danger order issued by the Secretary, the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed. The employer shall also have 15 days to contest such notification or proposed assessment of penalty, and, if he does not do so, they become final.

If the employer decides to contest a citation or notification, or proposed assessment of penalty, the Secretary must afford an opportunity for a formal hearing under the Administrative Procedure Act. Based upon the hearing record the Secretary shall issue an order confirming, denying, or modifying the citation, notification, or proposed penalty assessment. The procedural rules prescribed by the

Secretary for the conduct of such hearings must make provision for affected employees or their representatives to participate as parties.

Section 10(c) also gives an employee or representative of employees a right, whenever he believes that the period of time provided in a citation for abatement of a violation is unreasonably long, to challenge the citation on that ground. Such challenges must be filed within 15 days of the issuance of the citation, and an opportunity for a hearing must be provided in similar fashion to hearings when an employer contests. The employer is to be given an opportunity to participate as a party.

Any person adversely affected or aggrieved by a final order of the Secretary which is issued after a hearing may obtain review in the appropriate United States court of appeals within sixty days of the service of the Secretary's order. Such judicial review will be based upon the record made in the administrative hearing, and the substantial evidence rule will apply to the Secretary's findings. Provision is also made, in section 10(e), for the Secretary to obtain an automatic court enforcement order when no review has been requested within such 60 day period.

It is anticipated that in many cases an employer will choose not to file a timely challenge to a citation when it is issued, on the assumption that he can comply with the period allowed in the citation for abatement of the violation. In some such cases the employer may subsequently find that despite his good faith efforts to comply, abatement cannot be completed within the time permitted because of factors beyond his reasonable control—for example, where the delivery of necessary equipment is unavoidably delayed. In order to prevent unfair hardship, the bill provides that in such instances the employer may obtain review and modification by the Secretary of the abatement requirements specified in the citation, even though the citation has otherwise become final.

Mention should be made of the proposal offered in committee to establish an independent three-member enforcement panel. Such a panel would hear and decide those cases in which a citation, a notification of failure to abate, or a proposed assessment of penalty is being challenged.

As in the case of the previously discussed proposal for an independent board to promulgate standards, the committee concluded that sounder policy would be to place the responsibility and accountability for administration of the total program in the Secretary of Labor, rather than to establish a new agency and create an unnecessary division of responsibility. While the argument has been made that due process considerations would be better served if the investigative and adjudicative functions were separated between two different agencies, the fact is that the provisions of the Administrative Procedure Act insure that under the bill as reported by the committee there will be a separation of functions within the Department of Labor between those subordinates of the Secretary who are engaged in investigation and prosecution, and those who are engaged in adjudication. The overwhelming majority of other regulatory programs are administered in just this fashion, and the requirements of due process are fully observed.

PENALTIES

Section 14 provides for civil penalties of up to \$1000 for each violation for which a citation has issued, or for failure either to correct a violation within the time prescribed, or to comply with an imminent danger order. In the case of a failure to correct a violation, the penalty applies to each day of failure—excluding any period of review proceedings which the employer has initiated in good faith. Section 14(b) specifies that in the assessment of penalties consideration shall be given to the size of the business involved, the gravity of the violation, the history of previous violations, and the good faith of the employer. The Secretary may compromise, mitigate, or settle any claim for such penalties.

The Committee recognizes that given the complexities of modern industry, violations involving the broad range of technical standards do not lend themselves to any simple determination as to the amount of civil penalties to be assessed. Therefore, the Committee believes that within the framework of the Act's penalty provisions, the Secretary should have as much flexibility as possible to enable him to assess the amount of civil penalty which he determines is appropriate to the violation in question. We would expect the Secretary, therefore, to develop an internal manual or guide which would include a set of principles to follow in determining the proper amount of civil penalties to be applied to violations under the Act. The Secretary may compromise, mitigate or settle such penalties through informal procedures without the need of a hearing.

Section 14 also makes it a misdemeanor to willfully violate the requirements of the act: to give advance notice of an inspection without authority from the Secretary; and to make any false statement, representation or certification in any document filed or required to be maintained under the act. The provisions already contained in title 18, United States Code, which make it a crime to kill, assault, or resist certain Federal law enforcement personnel while engaged in the performance of official duties, are extended so as to protect all law enforcement officials of the Departments of Labor and Health, Education and Welfare.

RECORDKEEPING AND REPORTS

Full and accurate information is a fundamental precondition for meaningful administration of an occupational safety and health program. At the present time, however, the Federal government and most of the states have inadequate information on the incidence, nature, or causes of occupational injuries, illnesses, and deaths. Not only are there serious deficiencies in the present data collection procedures, but adherence to the commonly used method of work injury record-keeping—the Z161 standard of the American National Standards Institute—thwarts the collection of information regarding many significant work injuries and occupational illnesses. Thus an essential first action under this bill should be the institution of adequate statistical programs.

Section 8(c) of the bill directs the Secretary of Labor to cooperate with the Secretary of Health, Education and Welfare in devising regulations which will implement the goal of completeness in the recording and reporting of pertinent data.

The committee recognizes the fact that some work-related injuries or ailments may involve only a minimal loss of work time or perhaps none at all, and may not be of sufficient significance to the Government to require their being recorded or reported. However, the committee was also unwilling to adopt statutory language which in practice might result in under-reporting. The committee believes that records and reports prescribed by the Secretary should include such occurrences as work-related injuries and illnesses requiring medical treatment or restriction or reassignment of work activity, as well as work-related loss of consciousness.

The committee also expects that the Secretary of Labor and the Secretary of Health, Education, and Welfare will make every effort, through the authority to issue regulations and other means, to obtain complete data regarding the occurrence of illnesses, including those resulting from occupational exposure which may not be manifested until after the termination of such exposure.

The committee recognizes the need to assure employers that they will not be subject to unnecessary or duplicative record-keeping requests and has specifically stated this intent in section 8(d). To that end the committee intends that, wherever possible, reporting requirements should be satisfied by having an employer report relevant data only to one Governmental agency and that other Governmental agencies, if any, should then acquire their information from the original agency.

The committee also intends that the annual reports of both the Department of Labor and the Department of Health, Education, and Welfare should contain comprehensive presentations of collected data, together with analyses thereof, so that this committee and others in Congress may review the adequacy of progress and the possible need for further legislation.

MONITORING OF HAZARDOUS SUBSTANCES AND PHYSICAL AGENTS

Under Section 8(c) the Secretary of Labor, in cooperation with the Secretary of Health, Education, and Welfare, is to issue regulations specifying the records to be kept by employers who are required to monitor employee exposures to potentially toxic materials or harmful physical agents. Since such exposure is a matter of crucial concern to affected employees, provision is also made for employee observation of such monitoring and for employee access to the records thereof. This section also places upon the employer the burden of promptly notifying any employees who have been or are being exposed to harmful materials or agents in concentrations or at levels above those prescribed in applicable standards, of that fact and of the corrective action being taken.

These provisions serve as essential complements to those contained in section 6, which provide that standards relating to hazardous substances and agents shall prescribe the use of labels or other forms of warning to apprise employees of the symptoms of over-exposure and appropriate emergency treatment, and shall also prescribe medical examinations of employees when necessary to determine whether exposure has been or may be harmful.

FEDERAL-STATE RELATIONS

Section 16 makes clear the intent that no State will be prevented from asserting jurisdiction under state law over any occupational safety or health matter for which no Federal standard has been established under this act.

Moreover, whenever a State wishes to assume responsibility for developing or enforcing standards in an area where standards have been promulgated under this act, the State may do so under a state plan approved by the Secretary of Labor. The plan must contain assurances that the State will develop and enforce standards at least as effective as those developed by the Secretary, that the State will have the legal authority, personnel and funds necessary to do the job, and that a right of entry into workplaces is provided. The plan must contain added assurances that employers will make reports to the Secretary in the same form and to the same extent as if the plan were not in effect. In addition, the plan must contain assurances that the State will, to the extent possible under its law, establish and maintain an occupational safety and health program applicable to all employees of the State and its political subdivisions, and that such program will be as effective as that applicable to provide employers covered by the plan.

On the basis of reports submitted by the State agencies, the Secretary shall withdraw his approval if he finds that in actual operation there has been a failure to comply substantially with the plan or with the assurances stated in it.

The bill provides that an opportunity for a hearing shall be afforded whenever the Secretary rejects a proposed State plan and whenever he withdraws approval previously given. Judicial review of such action by the Secretary is also provided.

It should be noted that a State's program need not be all-encompassing; it may restrict itself to a particular hazard or industry. However, industries or hazards not covered by the plan will continue to be under Federal jurisdiction.

As an encouragement for State action, the bill provides Federal financial support to assist the States in assuming their own programs for worker health and safety. Planning grants with up to 90 percent Federal participation, and program grants with up to 50 percent Federal participation are provided.

The 90 percent grant is designed to aid the States in identifying needs, developing State plans and programs for collecting statistical data, increasing personnel capabilities, and improving administration and enforcement. The 50 percent Federal grant is made available to assist States in carrying out the occupational safety and health programs contained in their plans, as well as programs concerning occupational safety and health statistics.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

Section 2193 provides coverage for the approximately three million employees of the Federal Government. Section 17 requires Federal agencies to promulgate safety and health standards consistent with those developed by the Secretary of Labor for private industry. This section also amends section 2902(a)(1) of title 5, United States Code,

to permit representatives of labor organizations to serve on the President's Federal Safety Council.

During the past 25 years, there has been considerable improvement in the safety record of the Federal Government, but if it is to serve as a model employer, there must be an increased effort to achieve this ideal.

In 1965, President Johnson launched the Mission Safety—70 program in an effort to dramatically reduce injuries among Federal employees. The plan envisioned a 30 percent reduction in the frequency rate of disabling injuries during the life of the program. In the first four years after the plan's initiation, the Government progressed only 10.4 percent toward its goal. Clearly, there is a significant margin of improvement yet to be achieved.

In order to create a more effective safety program, the bill directs each Federal agency to purchase and maintain safety devices and to require their use. Agencies must also keep adequate records and make an annual report on occupational accidents and illnesses to the Secretary. The Secretary, in turn, shall annually prepare and submit to the President for transmittal to Congress his evaluations and recommendations of the Federal safety program.

The above requirements are intended to establish clear responsibility for the Federal Government's internal safety and health efforts, and provide the Secretary with an active role in coordinating the multiplicity of programs devised by various agencies. Congress also will be offered an opportunity to learn of current health and safety conditions through annual reports.

RESEARCH AND RELATED ACTIVITIES; THE NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

The hearings on this bill made unmistakably clear the critical inadequacy of past and current research activities to furnish solutions to the problems of occupational health and safety. When we realize that not only do we still have insufficient information regarding many of the threats to health which have long been known to exist in industry, but, in addition, that the modern worker encounters health hazards involving complex, often synergistic, interactions of numerous physical and chemical agents, and that the introduction of such agents into industry is proceeding at a rapid pace, the shortcomings of our present research efforts must necessarily be a matter of utmost concern.

Accordingly, section 18 has placed specific statutory responsibility upon the Secretary of Health, Education, and Welfare to carry on a variety of research activities. These include studies of the psychological factors involved in solving occupational safety and health problems and the development of innovative methods and techniques for dealing with such problems.

In addition, the Secretary of Health, Education, and Welfare is made responsible for producing criteria upon which the Secretary of Labor may promulgate occupational safety and health standards. Such criteria are scientifically determined conclusions, describing medically acceptable tolerance levels of exposure to harmful substances or conditions over a period of time, and may include medical judgments on methods and devices used to control exposure or its effects.

At the present time criteria and standards have been developed for relatively few materials and are continually in need of review and revision. There is a serious deficiency in criteria for a growing number of toxic industrial chemicals, as well as such physical hazards as noise, vibration, extremes of temperature and humidity, effects of parts of the electromagnetic spectrum, and extremes of pressure.

In order to carry out his research functions, the Secretary of Health, Education, and Welfare is given authority to require employers to measure and report on employee exposure to substances and physical agents which may be harmful, and to establish programs of medical examinations for determining the incidence of occupational illness and susceptibility of employees to such illness. When such programs of medical examinations are established for research purposes, they may be furnished at the expense of the Government; in addition, provision is made for the Secretary of Health, Education, and Welfare to furnish financial or other assistance to employers in order to defray additional expenses incurred in carrying out programs of measuring and recording exposures for research purposes.

Section 18 further requires the Secretary of Health, Education, and Welfare to publish and regularly maintain a list of all substances used or found in the workplace and known to be potentially toxic, and the concentrations at which toxicity is known to occur. Provision is made for employers or employees to request a determination regarding the potential toxicity of any material normally found in the workplace. Any such determination shall be furnished to those affected, and, if the substance is not covered by an existing standard, the determination shall also be submitted to the Secretary of Labor so that he may take appropriate action.

Section 18 also makes specific provision for studies of the effect of chronic or low-level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults.

In addition to those types of studies specified in the bill, Section 18 would authorize a wide range of other research projects, which may be conducted directly or through grants. Among those which the committee believes it important to undertake are studies of the toxic effects of exposure to particular combinations of chemical and physical agents, development of appropriate instruments for monitoring the level of environmental hazards in the workplace, including personal monitoring devices to be used by individual workers, studies of mental and personality disorders attributable to occupational stresses, development of reliable tests for identifying and predicting the level of individual tolerance to workplace hazards, and medical surveillance programs to provide early detection of incipient health deterioration, and studies of the potential genetic effects of complex chemicals and other materials in the work environment.

In order to provide occupational health and safety research with the stability and status it merits, section 19 of the bill establishes within the Department of Health, Education, and Welfare a new Institute, to be known as the National Institute of Occupational Health and Safety. The Institute will be headed by a Director, appointed by the Secretary of Health, Education, and Welfare for a term of six years, and will have the responsibility for conducting research into all phases of occupational health and safety on an in-

house and contract basis. It is also authorized to perform all of the research, training, and related activities to be performed by the Secretary of Health, Education, and Welfare under section 18 of the bill, described above.

On the basis of its research the Institute will formulate recommended occupational health and safety standards and transmit them to the Secretaries of Labor and Health, Education, and Welfare for appropriate further action in accordance with the procedures established by section 6 of the bill for the promulgation of mandatory standards.

The new Institute would perform all of the research now conducted by the Bureau of Occupational Health and Safety (BOSH) in the Health Services and Mental Health Administration of the Department. In the past, BOSH, notwithstanding its limited resources, has performed extremely valuable work in the field of occupational health and safety. The establishment of a special Institute to perform the work previously done by BOSH is not intended as any criticism of BOSH, but stems from the need to elevate the status of occupational health and safety research and to increase greatly the funds devoted for that purpose.

The present budget request for BOSH in FY 1971 is \$13.6 million with 375 authorized positions. (\$5.1 million and 95 positions are for coal mine health research). According to an issue report prepared by an HEW task force, an adequate program for occupational health alone in 1975 would require \$49.1 million and 800 positions (Hearings, Pt. 2, p. 1713). A similar conclusion was reached by the National Environmental Health Committee which, in a 1965 report to the Surgeon General, estimated that an adequate national occupational health program would require at least \$50 million annually (Hearings, Pt. 2, p. 1770). In light of these estimates the committee seriously questions the adequacy of the budgetary estimate in the range of \$7 to \$8 million annually submitted to the committee by Administration spokesmen (Hearings, Pt. 1, p. 156).

TRAINING AND EMPLOYEE EDUCATION

One of the essential contributions Government can make to accomplishing the purposes of this act is through the dissemination of vital health and safety information and the development of necessary educational and training programs. For the enactment of an effective law will not achieve its purposes, unless proper resources are directed toward appropriate education and training activities.

Both Federal and state safety and health inspectors are in critically short supply. There are only 1,600 state safety inspectors, and fewer than 100 Federal inspectors. Only three states have over 100 inspectors; about half have fewer than 25 inspectors; 16 have a dozen or less; four states have no inspection personnel whatsoever. Only three states have inspectors who are trained in the field of occupational health and hygiene. Ironically, there are twice as many fish and game wardens in the United States as there are safety and health inspectors. The hearings revealed a dearth of occupational health specialists in this country—probably no more than 700 are available to meet the demands of a national program to provide healthful working conditions.

A substantial increase in manpower with professional competence is plainly needed to bring about a successful program. To help meet

this need, certain provisions in the bill are designed to expand significantly the number of properly trained personnel to work in the field of occupational safety and health. Section 18 authorizes the Secretary of Health, Education, and Welfare, after consultation with the Secretary of Labor, to conduct programs for the education of safety and health personnel.

In order to promote a greater awareness of safety in the workplace, the bill also provides for the training of employers and employees in sound safety and health practices.

There is need for the Secretary of Labor, working with the Civil Service Commission, to continue to establish qualifications for Federal occupational safety personnel which have a meaningful relationship to standards promulgated under this act. It is absolutely essential that all who are carrying out duties under this act will be fully qualified to do so.

COVERAGE, APPLICABILITY, AND RELATIONSHIP TO OTHER LAWS

This bill applies to all employment performed in a business affecting commerce among the states, as well as employment in the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands, Johnston Island and the Canal Zone.

The bill does not affect any Federal or state workmen's compensation laws, or the rights, duties, or liabilities of employers and employees under them. In addition, it does not modify other Federal laws prescribing safety and health standards. The bill does not authorize the Secretary of Labor to assert authority under this bill over particular working conditions regarding which another Federal agency exercises statutory authority to prescribe or enforce standards affecting occupational safety and health.

Section 4(b) of the bill provides that the safety and health standards promulgated under other statutes administered by the Secretary of Labor—the Walsh-Healey Public Contracts Act, the Service Contract Act, the Construction Safety Act, the National Foundation on Arts and Humanities Act, and the Longshoremen's and Harbor Workers' Compensation Act—shall be superseded if corresponding standards are promulgated under this act which are determined by the Secretary to be more effective. Section 4(b) also provides that standards issued under such other statutes shall be deemed to be standards issued under this act. This provision is included in order to make applicable the provisions of this act in administering the other health and safety statutes under the jurisdiction of the Secretary of Labor. Other remedies provided by such statutes, such as the contract remedies contained in most of these statutes, are not modified by this bill.

It is the intent of the committee that the Secretary will develop health and safety standards for construction workers covered by Public Law 91-54 pursuant to the provisions of that law and that the Secretary will utilize the same mechanism and resources for the development of health and safety standards for other construction workers newly covered by this act.

Although the committee has taken care to avoid probable areas of duplication, some questions may arise after enactment. Thus, within three years after the effective date of this act, the Secretary

must report to Congress his recommendations to achieve coordination between this act and other Federal laws.

NATIONAL COMMISSION TO STUDY STATE WORKMEN'S COMPENSATION LAWS

During the hearings and research conducted by the Committee and its staff on the adequacy of State programs to prevent occupational injury and disease, the Committee's attention was, inevitably, also drawn to the nature of State workmen's compensation programs, upon which injured or diseased workers, and their families are frequently wholly dependent for the replacement of lost income, proper medical treatment, and rehabilitation. Testimony received by the Committee, as well as other information available to the Committee, raises serious questions about the present inadequacy of many State workmen's compensation laws.

For example, workmen's compensation benefit levels do not appear to have kept pace with increasing wage levels and the rising cost of living faced by American workers, with the result that benefits usually replace only a small fraction of the income lost due to disabling injury or disease. As the following table shows, between 1940 and 1969 the ratio of maximum benefits to average weekly wages decreased in 44 States:

RATIO OF MAXIMUM WEEKLY BENEFIT FOR TEMPORARY TOTAL DISABILITY TO AVERAGE WEEKLY WAGES, BY STATE (1940 AND 1970)

[In percent]

State	Ratio of maximum temporary total disability benefit for worker, wife, and 2 dependent children to average weekly wage ¹		State	Ratio of maximum temporary total disability benefit for worker, wife, and 2 dependent children to average weekly wage ¹	
	1940	1970		1940	1970
Alabama.....	94.9	43.9	Montana.....	79.8	48.9
Alaska.....	(2)	61.5	Nebraska.....	63.1	47.8
Arizona.....	(2)	117.7	Nevada.....	84.7	57.9
Arkansas.....	122.2	49.5	New Hampshire.....	83.8	55.4
California.....	80.2	59.7	New Jersey.....	67.9	63.7
Colorado.....	54.7	47.1	New Mexico.....	86.5	42.4
Connecticut.....	85.9	62.9	New York.....	80.9	63.3
Delaware.....	50.6	52.9	North Carolina.....	100.1	47.0
District of Columbia.....	93.7	50.7	North Dakota.....	89.6	64.8
Florida.....	89.5	45.8	Ohio.....	63.8	43.1
Georgia.....	112.0	42.9	Oklahoma.....	71.2	40.8
Hawaii.....	116.2	88.0	Oregon.....	87.5	55.2
Idaho.....	79.4	59.7	Pennsylvania.....	69.0	45.8
Illinois.....	67.5	56.3	Puerto Rico.....	(4)	59.2
Indiana.....	60.1	41.3	Rhode Island.....	83.7	70.0
Iowa.....	63.2	50.0	South Carolina.....	153.4	47.2
Kansas.....	78.0	47.4	South Dakota.....	66.4	49.4
Kentucky.....	68.2	43.4	Tennessee.....	78.2	41.6
Louisiana.....	94.3	38.8	Texas.....	84.0	39.4
Maine.....	85.8	66.7	Utah.....	72.0	51.3
Maryland.....	81.0	44.0	Vermont.....	62.3	56.5
Massachusetts.....	68.2	68.5	Virginia.....	74.9	54.4
Michigan.....	55.1	57.8	Washington.....	51.1	45.5
Minnesota.....	77.4	53.7	West Virginia.....	62.1	50.1
Mississippi.....	(2)	39.0	Wisconsin.....	73.5	59.9
Missouri.....	78.4	48.4	Wyoming.....	88.4	52.8

Source: U.S. Department of Labor.

¹ The percentages in these columns are found by dividing the maximum weekly benefit for a worker, his wife, and 2 dependent children by the average weekly wage as reported under the State unemployment insurance acts. The 1969 benefit is divided by the 1968 average weekly wage as the wage data for 1969 were not available when the ratios were computed.

² No maximum weekly benefit for temporary total disability.

³ No workmen's compensation law.

⁴ Average weekly wage not available.

Another matter of serious concern is the failure of many State programs to recognize certain types of occupational disease as compensable. The tragic results of the failure of State programs to recognize one such disease, coal workers' pneumoconiosis—better known as "black lung"—have already been recognized, and responded to, by Congress in the Coal Mine Health and Safety Act of 1969, title 4 of which provides special federal benefits for black lung victims and requires that State laws provide adequate coverage for them commencing January 1, 1973. According to testimony received by the Committee, equally tragic results have attended the failure of State workmen's compensation programs to recognize as compensable byssinosis, a respiratory disease caused by the inhalation of cotton dust produced during the processing of textiles.

Failure to provide adequate coverage for occupational disease is only one of the gaps in the coverage of existing State laws. Because of exemptions based on type of employment, or number of employees, approximately 20% of all American workers fail to enjoy the protection of workmen's compensation. Among those workers usually excluded are agricultural employees, notwithstanding the fact that today agriculture is one of our most hazardous occupations.

More generally, although for many years the U.S. Department of Labor and the International Association of Industrial Accident Boards and Commissions have published recommended standards for State laws, the overall ratio of compliance with such standards today is less than 50%. Similarly, a model workmen's compensation law, even though developed under the auspices of the Council of State Governments, appears to have been largely ignored.

Given the breadth and seriousness of the problem, and the importance of an adequate workmen's compensation program to assure injured or diseased employees of reasonable and prompt compensation, adequate medical treatment, and rehabilitation, the Committee believes that a comprehensive study and evaluation of State workmen's compensation laws should be undertaken immediately.

Accordingly, section 23 of the bill would establish a 15-member National Commission on State Workmen's Compensation Laws. The function of the Commission would be to study and evaluate existing State laws in order to determine if they provide an adequate, prompt and equitable system of compensation for the victims of occupational injuries and diseases. Members of the Commission would be appointed by the President from among members of State workmen's compensation boards, representatives of insurance carriers, business, labor, physicians having experience in industrial medicine or in workmen's compensation cases, educators specializing in workmen's compensation, and the general public. The Secretaries of Labor, Commerce, and Health, Education, and Welfare would be *ex officio* members. The final report of the Commission, with its findings, conclusions, and recommendations, would be due on October 1, 1971.

The Commission's attention would be specifically (but not exclusively) directed to the following 16 subjects:

- (1) The amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon;

- (2) The amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician;
- (3) The extent of coverage of workers, including exemptions based on numbers or type of employment;
- (4) Standards for determining which injuries or diseases should be deemed compensable;
- (5) Rehabilitation;
- (6) Coverage under second or subsequent injury funds;
- (7) Time limits on filing claims;
- (8) Waiting periods;
- (9) Compulsory or elective coverage;
- (10) Administration;
- (11) Legal expenses;
- (12) The feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws;
- (13) The resolution of conflict of laws, extraterritoriality and similar problems arising from claims with multistate aspects;
- (14) The extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist;
- (15) The relationship between workmen's compensation on the one hand and old-age, disability, and survivors insurance and other types of insurance, public or private, on the other hand;
- (16) Methods of implementing the recommendations of the Commission.

The listed subjects include most of the standards for workmen's compensation laws recommended by the U.S. Department of Labor and the International Association of Industrial Accident Boards and Commissions, as well as other matters which the Committee believes deserve particular attention.

The Committee wishes to emphasize that by authorizing this study it is not impliedly recommending federalization of the existing workmen's compensation system or its merger with the O.A.S.D.I. program. Nor is it willing to accept the notion that workmen's compensation would, under any and all circumstances, remain a matter completely within the prerogatives of the States. Just as the federal government has a responsibility to assure that American workers are protected from job-related injury and disease, it also has an interest in insuring that those American workers who do suffer job-related injury or disease are adequately compensated and treated.

Whether, and to what extent, the Federal government should become directly or indirectly involved in assuring the adequacy of workmen's compensation will be one of the matters considered by the Commission in framing its recommendations. Indeed, one of the primary purposes of authorizing this study and report is to provide a basis for an informed decision by Congress of this question in the future.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section provides that the act may be cited as the "Occupational Safety and Health Act of 1970."

Section 2—Congressional findings and purpose

Under this section Congress finds that personal injuries and illnesses arising out of work impose a substantial burden upon interstate commerce; and declares a Congressional policy to assure as far as possible every working man and woman safe and healthful working conditions in the following manner—

(1) providing development, promulgation and effective enforcement of occupational safety and health standards;

(2) providing for research relating to occupational safety and health;

(3) providing training programs to increase the competence of personnel;

(4) delineating the responsibilities of the Federal Government and States in their activities related to occupational safety and health;

(5) providing grants to States to help them in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans under the Act, and, to conduct experimental and demonstration projects;

(6) providing accident and health reporting procedures to more accurately describe occupational safety and health problems and achieve the Act's objectives.

Section 3—Definitions

Sections 3(a)-3(c).—These subsections define the terms "Secretary," "commerce," "person," "employee," and "employer." The term "employer" is defined to exclude the United States and their political subdivisions.

Section 3(b).—This subsection defines the term "occupational safety and health standard" as a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safe or healthful employment and places of employment.

Section 3(g).—This subsection defines the term "national consensus standard" as any occupational safety and health standard or modification which (1) has been adopted and promulgated by a nationally recognized standards producing organization under procedures whereby it can be determined by the Secretary that persons affected have reached substantial agreement on its adoption (2) and formulated after an opportunity for consideration of diverse views (3) and designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

Section 4(a).—The commission defines the term "regulated Federal function" as any operative occupational safety and health standard established by any agency of the United States and presently in effect, or established or authorized by Congress in future or proposed legislation.

Section 5—Applicability of act

Section 5(a).—The subsequent language purporting application of the act to all of the United States territories and possessions is precluded since in those places there are no Federal function units having jurisdiction. The Secretary of the Interior will arrange for future adjustment.

Section 5(b)(1).—The subsection requires that the act shall not be applied under Federal laws governing safety or health requirements of the standards, rules or regulations promulgated pursuant to any law except in the extent such modifications are provided for under subsection 4(b)(2). The subsection also provides that the act will not apply to working conditions of employees where any Federal law exists which gives the Secretary of Labor explicit authority to promulgate standards, rules or regulations affecting occupational safety and health.

Section 5(b)(2).—Under this subsection standards promulgated under the act and promulgated by the Secretary to become effective, will supersede corresponding standards promulgated under existing laws relating to safety and health of employees. Standards under the act and laws are deemed to be standards under this act. The provisions of this act apply to the administration of the statute issued in this situation, but other measures provided by past statutes also apply.

Section 5(b)(3).—The subsection requires the Secretary to report to Congress for legislation to avoid unnecessary duplication between this act and other Federal laws within a year after the effective date of this act.

Section 5(b)(4).—The subsection provides that the act shall not be deemed to affect workmen's compensation laws or common law or statutory rights, duties or liabilities of employers and employees under any law relating to injuries, diseases or death, stemming from the course of employment.

Section 5—Duties of employers

Section 5(a).—The subsection provides that each employer:

(1) he shall: (a) provide his employees with necessary and a place of employment free from recognized hazards to the health and safety of his employees; and

(2) must comply with occupational health and safety standards and rules, regulations and orders promulgated under this act, except as provided in section 17 relating to these regulations and orders.

Section 5(b).—Under this subsection, each employee has the duty of complying with occupational health and safety standards and the rules, regulations and orders issued under this act, except as provided by section 16.

Section 6. Occupational safety and health standards

Section 6(a). Under this subsection, the Secretary, as soon as practicable after the effective date of the act, and until two years from such date, shall by rule promulgate (without regard to the rule making provisions of the Administrative Procedure Act) as an occupational safety or health standard any national consensus standard or any established Federal standard unless he determines promulgation would not result in improved safety or health for specifically designated employees. The Secretary shall resolve any conflict in standards by promulgating the standard assuring the greatest protection of safety and health to affected employees. The Secretary may also promulgate any standard adopted prior to the date of enactment by a nationally recognized standards-producing organization by other than a consensus method in accordance with section 553 of title 5, United States Code (Rulemaking provisions of the Administrative Procedure Act).

Sections 6(b)(1) to Subsections 6(b)(6). These subsections contain procedures for the Secretary to promulgate, modify, or revoke any occupational safety and health standard.

Section 6(b)(1) provides that the Secretary may request the recommendations of an advisory committee appointed under section 7 whenever he determines from information submitted in writing by an interested person, a representative of an employer or employee organization, a nationally recognized standard producing organization, the Secretary of Health, Education, and Welfare, the National Institute of Occupational Health and Safety, a State or political subdivision, or on the basis of his own information, that a rule (standard) should be promulgated. Where an advisory committee is appointed, the Secretary must provide such committee with any proposal of his own or of the Secretary of Health, Education, and Welfare as well as any factual information that has been developed. The advisory committee must submit to the Secretary its recommendations within 90 days from the date of its appointment or a longer or shorter period of time prescribed by the Secretary, but no longer than 270 days.

Section 6(b)(2)—Under this subsection, the Secretary is required to publish a proposed rule promulgating, modifying or revoking an occupational safety or health standard in the Federal Register and afford interested persons a period of 30 days after publication to submit written comments. Where an advisory committee is appointed and the Secretary determines that a rule shall be issued, he must publish the proposed rule within 60 days after submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary.

Section 6(b)(3). This subsection permits any interested person to file with the Secretary written objections to the proposed rule and requesting a public hearing on or before the last day of the period provided for in subsection 6(b)(2). Within 30 days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the standard objected to and time and place for a hearing.

Section 6(b)(4). This subsection provides that within 60 days after expiration of the period of notice under subsection 6(b)(2) or within 60 days after completion of a hearing under subsection 6(b)(3) the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety and health standard or make a determination

that a rule should not be issued. A rule issued may contain a provision delaying the effective date for a period determined by the Secretary.

Section 6(b)(5).—Under this subsection, the Secretary, in promulgating standards, is required to set the standard which most adequately and feasibly assures, on the basis of the best available evidence, that employees will not suffer impairment of health, functional capacity, or diminished life expectancy even if regularly exposed to the hazard throughout their working lives. Development of standards is to be based on research, demonstration, experiment, and other appropriate information. In addition to attainment of the highest degree of safety and health protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards and experience gained under this and other health and safety statutes. Wherever practicable, the standard should be expressed in terms of objective criteria and performance desired.

Section 6(b)(6).—Under this subsection, any standard promulgated under subsection 6(b) must prescribe the use of labels or other warnings as are necessary to ensure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. A standard, when appropriate, shall prescribe protective equipment, control or technological procedures to be used, and shall provide for monitoring or measuring employee exposure as may be necessary for the protection of the employee. Where appropriate, such standard shall prescribe the type and frequency of medical examination or tests which the employer shall provide, at his cost, in order to determine whether the employee exposed to such hazards is adversely affected by such exposure. The medical examination may be furnished at the expense of the Secretary of Health, Education, and Welfare if he determines them to be in the nature of research. The results of such examinations or tests shall be furnished only to the Secretary, the Secretary of Health, Education, and Welfare and at the employee's request, to his physician. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, may by rule promulgated pursuant to section 553 of title 5, United States Code, modify the foregoing requirement relating to labels, warning, monitoring and medical examination as subsequently acquired experience, information, or medical and technical developments warrant.

Sections 6(c)(1) 6(c)(3).—Contain procedures for the Secretary to promulgate emergency temporary occupational safety and health standards.

Section 6(c)(1).—Under this subsection, where the Secretary determines that employees are being exposed to grave dangers from exposure to substances or agents determined to be toxic or physically harmful or from new hazards and that an emergency standard is necessary to protect the employees, he may promulgate an emergency temporary standard effective upon publication in the Federal Register without regard to the rulemaking procedures of the Administrative Procedure Act.

Section 6(c)(2).—Under this subsection, an emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures of subsection 6(c)(3).

Section 6(c)(3).—This subsection requires the Secretary to commence a proceeding for promulgating a standard in accordance with section 6(b) upon publication of the emergency temporary standard. The Secretary shall promulgate the permanent standard no later than six months after publication of the emergency temporary standard.

Section 6(d).—This subsection allows an affected employer to apply to the Secretary for a rule for a variance from a standard promulgated under this section. The subsection provides that affected employees shall be given notice of the application and an opportunity to participate in a hearing. The Secretary shall issue such a rule if he determines on the record, after opportunity for an inspection where appropriate, and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence, that the conditions, practices, means, methods, operations or processes used or proposed to be used by the employer will provide employment and places of employment at least as safe and healthful as would prevail if he complied with the standard. The rule or order must prescribe the conditions the employer must maintain and the practices he must adopt. Such a rule may be modified or revoked upon application by an employer, employee or by the Secretary in the manner prescribed for its issuance under this subsection at any time after six months after its issuance.

Section 6(e).—This subsection provides that where the Secretary promulgates a standard, makes a rule, order or decision, grants an exemption or extension of time, or compromises, mitigates or settles any petition, that he include a statement of his reasons for the action and publish it in the Federal Register.

Section 6(f).—Under this subsection, a person adversely affected by a standard issued under this section may, within 60 days of its promulgation, obtain judicial review of such standard by filing a petition challenging the validity of the standard in an appropriate United States Court of Appeals. The filing of a petition shall not stay the standard unless otherwise ordered by the court.

Section 7—Administration: advisory committees

Section 7(a).—This subsection authorizes the Secretary:

- (1) To use with the consent of any Federal agency, the services, facilities, or personnel of such Federal agency, with or without reimbursement, or of a State or its political subdivision with reimbursement;
- (2) To employ experts and consultants.

Section 7(b).—This subsection allows the Secretary to appoint advisory committees to recommend standards under section 6(b) proceedings. Each committee, consisting of not more than 15 members, is to include one or more members of the Secretary of Health, Education, and Welfare, and may include employer and employee representatives in equal numbers, representatives of State and local safety agencies, and other members qualified by knowledge and experience. The number of persons from private organizations appointed to any advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. This subsection also provides for the compensation of advisory committee members and forbids anyone serving as a committee member (other than representatives of employers and employees) who has an economic interest in any proposed rule.

Section 7(c).—This subsection requires the Secretary and the Secretary of Health, Education, and Welfare to appoint a National Advisory Committee on Occupational Health and Safety. The Committee, with twenty members, is to be composed equally of representatives of management, labor, occupational safety and health professions, and of the public. The Secretary appoints all members and a chairman, except occupational health representatives who are appointed by the Secretary of Health, Education, and Welfare. The Committee is to advise, consult with, and make recommendations to the Secretaries of Labor and Health, Education, and Welfare on matters relating to the act. At least two meetings on the record are required annually. All meetings are to be open. Provision is made for compensation of the members and staff support by the Secretary.

Section 8—Inspections, investigations and reports

Section 8(a).—Under this subsection, the Secretary or his representative, upon presenting appropriate credentials to the owner, operator or agent in charge, is authorized—

(1) to enter premises at reasonable times of any workplace where work is performed to which this act applies;

(2) to make reasonable inspections and investigations of conditions in workplaces and to question privately owners, operators, agents or employees.

Section 8(b).—This subsection provides the Secretary of Labor with the investigation and subpoena power relating to books, records, documents and witnesses contained in sections 9 and 10 of the Federal Trade Commission Act.

Section 8(c)(1).—This subsection requires employers to keep such records as the Secretary and the Secretary of Health, Education, and Welfare require by regulation, as necessary or appropriate for enforcement of the act or for developing information relating to occupational accidents and illnesses. The regulations may include provisions requiring employers to conduct periodic inspection to determine their own state of compliance with the act and regulations. The Secretary also must issue regulations requiring, through appropriate means, that employers keep employees informed of their rights, protections and obligations under the act, including provisions of applicable standards.

Section 8(c)(2).—This subsection requires the Secretary in cooperation with the Secretary of Health, Education, and Welfare to prescribe regulations requiring employers to keep records of all work-related injuries and diseases which arise, and make periodic reports. The Secretary is to compile accurate statistics on work injuries and diseases whether or not resulting in loss of time from work.

Section 8(c)(3).—This subsection requires the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, to issue regulations requiring employers to maintain records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored under sections 6 and 18. The regulations are to give employees or their representatives an opportunity to observe the monitoring or measuring, and to give employees and former employees access to such records of individual exposure. Employers are to notify employees of overexposure and shall inform overexposed employees of the corrective action being taken.

Section 8(d).— This subsection provides that information from employers should be obtained with a minimum burden on them, especially from employers operating small businesses.

Section 8(e).— Under this subsection, subject to regulations issued by the Secretary, a representative of the employer and an authorized representative of employees shall be given an opportunity to accompany the Secretary or his representative during a physical inspection under subsection 8(a) for the purpose of aiding such inspection. If the Secretary is unable to determine the existence of an authorized employee representative, the Secretary or his representative is to consult with a reasonable number of employees.

Section 8(f)(1).— Under this subsection, an employee or representative of employees who believes that a violation of a safety and health standard exists that threatens physical harm or imminent danger may request an immediate inspection by giving notice to the Secretary of such violation. The notice, which may be by telephone, to be reduced to writing, and signed, and upon request, the name of the person giving notice shall be kept confidential. The Secretary shall make a special inspection as soon as practicable if he determines upon receiving such notification that there are reasonable grounds to believe that such a violation or danger exists. If the Secretary does not find reasonable grounds, he shall give written notice to the employee or employee representative of such determination.

Section 8(f)(2).— Under this subsection, an employee or representative of employees, prior to or during an inspection, may notify the Secretary of a possible violation. The Secretary, if he fails to issue a citation with respect to such an alleged violation, shall furnish the employee or representative of employees a written explanation and must also establish by regulation procedures for informal review of any refusal to issue the citation.

Section 8(g).— This subsection authorizes the Secretary or the Secretary of Health, Education, and Welfare to publish information obtained from reports or information obtained under this section. Release of this information is discretionary, but shall be made available for public inspection to the extent required by the provisions of section 552 of title 5, United States Code (Freedom of Information Act).

Section 9—Citations for violations

Section 9(a).— Under this subsection, if the Secretary, after inspection, determines that an employer has violated sections 5, 6, or 8(c), 18 or a rule, regulation or order made pursuant thereto, he shall issue to the employer a citation in writing, describing the violation and giving a reference to the provision of the act, rule, regulation or order alleged to have been violated. The citation must fix a reasonable time for abatement of the violation. The Secretary may prescribe procedures for extension of a notice in lieu of a citation in the case of de minimus violations not having a direct or immediate relationship to safety or health.

Section 9(b).— This subsection requires the posting of the citation at or near the place of occurrence of the violation.

Section 10—Procedures for enforcement

Section 10(a).— This subsection requires the Secretary, if he issues a citation under section 9, to, within a reasonable time after termination

of the inspection or investigation to notify the employer of the penalty, if any, proposed to be assessed under section 14. The employer then has 15 working days to notify the Secretary whether he wishes to contest the citation or proposed assessment. If he fails to give such notice, and no notice is filed by employees or employee representative contesting the time fixed for abatement, the citation and the proposed assessment will be final and not subject to review. For purposes of enforcement under subsection 10(e) it would be considered a final order issued by the Secretary under subsection 10(c).

Section 10(b).—Under this subsection, if the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period of time permitted for its correction (which time does not begin to run until the expiration of administrative and judicial review initiated in good faith), or has failed to comply with an order issued under section 11(b), the Secretary shall notify the employer of such failure and of the penalty proposed to be assessed under section 14. The employer has 15 working days within which to notify the Secretary that he wishes to contest the Secretary's notification. If the employer fails to notify the Secretary, the proposed penalty will be final and for the purposes of enforcement under subsection 10(e), it shall be deemed a final order under subsection 10(c).

Section 10(c).—This subsection contains the procedures for contesting citations and proposed penalties. If an employer decides to contest a citation, notification or proposed penalty, or if within 15 days of the issuance of a citation an employee or employee representative files a notice alleging that the time fixed for abatement is unreasonable, the Secretary shall afford an opportunity for a hearing. The Secretary shall issue an order, based on findings of fact, confirming, denying, or modifying the citation or assessment of penalty. If he determines that an employer has not corrected a violation within the prescribed period, the Secretary shall issue such orders, based on findings of fact, as may be necessary for the correction of the violation and the assessment and collection of penalties. The Secretary shall give the employer or any other person who has filed notice under this subsection the information required under section 554(b) of title 5, United States Code, at least 15 days prior to the hearing. Upon the employer's showing of good faith efforts to comply with an abatement requirement of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing, shall issue an order affirming or modifying the abatement requirements. Affected employees or their representatives shall have an opportunity to participate as parties in hearings under this subsection.

Section 10(d). This subsection permits persons adversely affected or aggrieved by a final order of the Secretary, except where the order becomes final under subsection 10(a) or 10(b), to obtain review of such order in a United States Court of Appeals for the Circuit, where the violation is alleged to have taken place, or where the employer has its office, or in the District of Columbia within 60 days after the service of the Secretary's order. The subsection specifies the procedures to be followed after a petition for review is filed, including:

(1) The clerk of the court transmits a copy of the petition to the Secretary.

2. The Secretary files in court the record in the proceedings pursuant to 28 U.S.C. 2112 at which time the court of appeals has exclusive jurisdiction.

3. The court of appeals is authorized to grant such temporary restraining order, or other orders as it deems just and proper and may enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Secretary. The findings of fact by the Secretary are conclusive if they are supported by substantial evidence on the record considered as a whole. (See *Upjohn Co. v. Labor Board*, 340 U.S. 474 (1951)).

4. Any party may apply for leave to adduce additional evidence before the Secretary, who could then modify his original findings. Modified findings would also be conclusive if supported by substantial evidence on the record considered as a whole.

(5) Objections not urged before the Secretary will not be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(6) Commencement of proceedings under this subsection would not stay the Secretary's order unless ordered by the court.

(7) The courts of appeals are required to hear petitions expeditiously. This requirement is intended to emphasize to the courts of appeals the need for promptly acting on petitions in order to have speedy resolution of these cases.

(8) The judgment of the court of appeals is final except that it is subject to review by the Supreme Court as provided in 28 United States Code 1254.

Section 10(d).—This subsection would authorize the Secretary to petition a United States court of appeals for enforcement of his order. The prescribed procedures in the case of petitions for enforcement under this subsection are similar to subsection 10(d), except that no time limit is specified for the enforcement petition by the Secretary. If there is no petition for review filed within 60 days after service of the Secretary's order as provided in subsection 10(d), the Secretary's findings of fact and order would become conclusive in connection with any petition for enforcement filed by the Secretary after the expiration of such 60-day period. In the case of such petitions, as well as in the case of noncontested citations or notices by the Secretary which have become final under subsection 10(c) or 10(d), the clerk of the court of appeals would enter a decree enforcing the order of the Secretary and transmit copies to the Secretary and the employer.

In any contempt proceedings brought under this subsection or under subsection (d), the court of appeals may impose penalties as provided in section 14 in addition to other available remedies.

Section 10(f).—This subsection prohibits discharge or discrimination against an employee because of the exercise by the employee, on behalf of himself or others, of any rights under this act. Any employee who believes he has been discharged or discriminated against by any person in violation of this subsection may apply to the Secretary for a review of such discrimination. The Secretary shall investigate and provide the opportunity for a public hearing on the record and in accordance with rule 5, United States Code 554, Administrative Procedure Act. If the Secretary finds a violation, he shall issue a decision and order requiring the person committing the violation to take such affirmative action as may be appropriate to abate the

violation, including but not limited to, rehiring or reinstatement with back pay. Judicial review of proceedings under this subsection may be obtained pursuant to subsection 10(d) or (e) of this section.

Section 11—Procedures to counteract imminent dangers

Section 11(a).—Under this subsection, if the Secretary determines that imminent danger exists in a place of employment, he may bring a civil action in a United States District Court for a temporary restraining order or injunction requiring correction of the danger and prohibiting the employment of individuals at the location, except for those whose presence is necessary to correct the danger, to maintain the capacity of a continuous process to restart, or to permit an orderly cessation of operations. The subsection provides that actions may be brought while an order under subsection 11(b) is in effect. "Imminent danger" is defined as a condition or practice which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

Section 11(b).—Under this subsection, if the danger referred to in subsection 11(a) is of a nature such that immediate action is necessary, the Secretary may issue an order requiring the same steps to be taken as in subsection 11(a) to remain in effect not more than 72 hours. The Secretary must issue regulations providing for informal reconsideration by appropriate officials of such order. If the authority to issue orders is delegated by the Secretary, the concurrence of an appropriate regional Labor Department official must be obtained. This concurrence may be obtained by telephone.

Section 11(c).—Under this subsection, if the Secretary arbitrarily or capriciously fails to issue an order or seek relief under this section, any employee or representative of employees who may be injured by such failure, may seek a writ of mandamus in the United States District Court to compel the Secretary to issue an order or for other relief.

Section 12—Representation in civil litigation

This section authorizes the Solicitor of Labor to appear and represent the Secretary in civil litigation under this act subject to the direction and control of the Attorney General.

Section 13—Confidentiality of trade secrets

This section contains procedures for maintaining the confidentiality of trade secrets.

Section 14—Penalties

Section 14(a).—This subsection provides that an employer who violates any standard issued under section 6 or the requirements of 6(d), 8(c), 18 or any rule, regulation or order issued thereunder shall be assessed a civil penalty of not more than \$1,000. Any employer who fails to correct a violation for which a citation has been issued under section 9(a) or violates an order under section 11(b), shall be assessed a civil penalty of not more than \$1,000 for each day of violation.

Section 14(b).—This subsection permits the Secretary to compromise, mitigate or settle civil penalties using certain criteria specified in the subsection.

Section 14(c).—This subsection provides criminal penalties including fine and imprisonment for willful violation of sections 6, 6(d), 8(c), 18 or rules, regulations or orders issued thereunder.

Section 14(d).— This subsection provides a criminal penalty including fine and imprisonment for any person giving advance notice of an inspection.

Section 14(e).— This subsection provides criminal penalties for any person knowingly making a false statement or representation in any record, report, plan or other document filed under this act.

Section 14(f).— This subsection brings Department of Labor and Department of Health, Education, and Welfare personnel assigned to perform investigative, inspection, or law-enforcement functions under the protection of title 18 of the United States Code.

Section 15—Variations, tolerances and exemptions

This section allows the Secretary to provide reasonable limitations, variations, and tolerances to avoid serious impairment of the national defense, to be effective for no more than six months unless notice and opportunity for hearing is afforded affected employees.

Section 16—State jurisdiction and State plans

Section 16(a).— Under this subsection, a State may assert jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6 (occupational safety and health standards).

Section 16(b).— Under this subsection, a State can submit a State plan for the development and enforcement of standards relating to occupational safety or health issues that have been dealt with in standards promulgated under section 6.

Section 16(c).— This subsection requires the Secretary to approve the plan submitted by a State under subsection 16(b) or any modification thereof, if in his judgment:

(1) a State agency (or agencies) is designated for administering a plan throughout the State;

(2) it provides for the development and enforcement of standards which are or will be at least as effective as section 6 standards;

(3) it provides for a right of entry and inspection of all work places subject to the act at least as effective as provided in section 8(a), (c), (d) and (e) and includes a prohibition on advance notice of inspections;

(4) it contains satisfactory assurances that the State agency will have adequate legal authority and qualified personnel necessary for the enforcement of the standards;

(5) it contains satisfactory assurances of adequate State funds for administration and enforcement of standards;

(6) it contains satisfactory assurances that the State, to the extent permitted by law will establish an occupational safety and health program applicable to all employees of public agencies of the State, and its political subdivisions over which it has jurisdiction at least as effective as the State plan;

(7) it requires employers in the State to make reports to the Secretary in the same manner and extent as if the plan were not in effect;

(8) it provides that the State agency will make reports to the Secretary in such form as the Secretary shall from time to time require.

Section 16(d).—This subsection provides that if the Secretary disapproves a plan, he shall afford the State notice and opportunity for a hearing.

Section 16(e).—Under this subsection, after approval of a State plan, the Secretary may, but is not required to, exercise his authority under sections 8, 9, 10, and 14 with respect to comparable standards promulgated under section 6 until he determines on the basis of actual operations that the State is following the plan. However, if he exercises the authority, he shall not make the determination for at least three years after the plan's approval under subsection (16c). After State plan approval, provisions of sections 5(a)(2), 8 (except for the purposes of carrying out subsection (c)), 9, 10, and 14 and standards promulgated under section 6, shall not apply, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under sections 9 and 10 before the date of determination.

Section 16(f).—This subsection requires the Secretary to continually evaluate State plans. The Secretary has the power to withdraw approval of a State plan if he finds a failure to comply substantially with any provision of the State plan.

Section 16(g).—Under this subsection, the State may obtain review of withdrawal of approval or rejection of a plan in the United States Court of Appeals. The Secretary's decision shall be sustained unless the court finds that the Secretary's decision is arbitrary and capricious. This subsection provides for further appeal to the Supreme Court.

Section 17—Federal agency safety programs and responsibilities

Section 17(a).—This subsection states that the head of each Federal agency shall maintain a comprehensive occupational safety and health program consistent with standards promulgated under section 6. The head of each agency, after consultation with representatives of employees, shall provide—

- (1) standards consistent with standards under section 6;
- (2) acquire and maintain and require the use of safety devices to protect its personnel;
- (3) keep adequate records of occupational accidents and illnesses;
- (4) consult with the Secretary as to the adequacy of records; and
- (5) make an annual report to the Secretary with respect to occupational accidents and injuries.

Section 17(b).—This subsection requires the Secretary to submit a summary of reports submitted to him under subsection 17(a)(4) to the President. The President shall transmit annually to the Senate and House of Representatives a report of the activities of Federal agencies under this section.

Section 17(c).—This subsection amends section 7902(c)(1) of title 5, United States Code, to permit labor organizations representing employees to serve on the President's Federal Safety Council.

Section 17(d).—This subsection provides that the Secretary shall have access to records and reports kept by Federal agencies pursuant to (a) (3) and (5) of this subsection, unless the reports are required to be kept secret in the interests of national defense.

Section 18—Research, training and related activities

(1) Provides the Secretary of Health, Education, and Welfare, after consultation with the Secretary of Labor and other appropriate Federal agencies, shall conduct research, directly or by grant or contract, relating to occupational safety and health, including innovative methods of dealing with occupational safety and health problems.

(2) Provides that the Secretary of Health, Education, and Welfare shall be responsible for producing criteria upon which the Secretary of Labor may formulate occupational safety and health standards under this act. The Secretary of Health, Education, and Welfare is also required to consult with the Secretary of Labor to develop specific plans for research necessary to produce the criteria. The Secretary of Health, Education, and Welfare is also required to develop such criteria which would, if applied, assure that no employee will suffer impaired health or functional capacities, or diminished life expectancy as a result of his work experience.

(3) Provides that the Secretary of Health, Education, and Welfare, in order to meet his responsibilities under (2) and develop needed information regarding toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record and report on the exposure of employees to substances and physical agents which may endanger the health and safety of employees. He may also require programs for the physical examination of employees. An exemption from examinations or tests on religious grounds is provided. Upon request, the Secretary of Health, Education, and Welfare shall furnish full financial assistance to defray the expenses incurred by an employer developing this information.

(4) Within six months of enactment, and thereafter at least annually, the Secretary of Health, Education, and Welfare shall publish a list of all known or potentially toxic substances used or found in the workplace and concentrations at which such toxicity is known to occur. If requested by an employer or authorized representative of employees, he shall determine whether any substance found at a workplace has potentially toxic effects and shall so notify the employer and affected employees. Such determination shall be submitted to the Secretary if the substance is not covered by a standard promulgated under section 6.

(5) Provides that the Secretary of Health, Education, and Welfare within two years of enactment and annually thereafter shall conduct industry-wide studies of chronic or low-level exposure to industrial material, processes and stress on the potential for illness, disease, or loss of functional capacity in aging adults.

(6) Provides that the Secretary of Health, Education, and Welfare is authorized to make inspections and question employees as provided in section 8.

(7) Provides that the Secretary is authorized to enter into contracts or arrangements with public agencies or private organizations for the purpose of conducting studies related to establishing and applying standards under section 6. Provides for cooperation between the Secretary and the Secretary of Health, Education, and Welfare to avoid duplication of effort under this section.

(c) Provides that information obtained by the Secretary and the Secretary of Health, Education, and Welfare be disseminated by the Secretary to employers and employees and organizations.

(d) Provides that the Secretary of Health, Education, and Welfare, after consultation with the Secretary, shall conduct directly or by grant or contract educational programs to provide qualified personnel to carry out the act and information on the use of safety and health equipment.

(e) Provides that the Secretary directly or by grant or contract set up short-term training programs for personnel.

(f) Provides for the establishment by the Secretary of training programs for employers and employees in the prevention of unsafe and unhealthful working conditions.

(g) Provides for the delegation of functions, as feasible, by the Secretary of Health, Education, and Welfare to the Director of the National Institute for Occupational Safety and Health established in section 19.

Section 19—National Institute for Occupational Safety and Health

(a) States that the purpose of this section is to establish a National Institute for Occupational Safety and Health in the Department of Health, Education, and Welfare to carry out policy set forth in section 2 and to perform the functions of the Secretary of Health, Education, and Welfare under section 18.

(b) Defines the terms "Director" and "Institute."

(c) Establishes the National Institute for Occupational Safety and Health to be headed by a Director appointed by the Secretary of Health, Education, and Welfare to serve for six years.

(d) Authorizes the Institute to develop and establish recommended occupational safety and health standards and perform the functions of the Secretary of Health, Education, and Welfare.

(e) Authorizes the Director to conduct research and experimental programs for the development of criteria for new or improved standards and make recommendations for such standards. Provides for the forwarding of such standards to the Secretary and the Secretary of Health, Education, and Welfare.

(f) Authorizes the Director to: prescribe regulations, receive money and donations and dispose of them in accordance with paragraph (2), appoint and compensate personnel, obtain the services of experts in accordance with section 3109 of title 5, United States Code, accept voluntary services, enter into grants, contracts, make advance payments, and rent office space.

(g) Provides for an annual report by the Institute to be submitted to the Secretary of Health, Education, and Welfare, the President, and Congress on its operations.

Section 20—Grants to the States: Statistics

(a)(1) Authorizes the Secretary, during fiscal year 1971, and two succeeding fiscal years, to make grants to State agencies designated under section 16(c) to assist—

(A) in identifying needs;

(B) in developing plans under section 16;

(C) in developing plans for—

(i) collecting statistical data;

- ii) increasing personnel capabilities;
- (iii) improving administration and enforcement, including standards.

(2) Provides that the Secretary, commencing in fiscal year 1971, and the two succeeding fiscal years, shall make experimental and demonstration grants.

(3) Provides that the Governor of a State shall designate the State agency to receive a grant.

(4) Provides that the State agency designated by the Governor shall submit grant application to the Secretary.

(5) The Secretary, after review and consultation with the Secretary of Health, Education, and Welfare shall accept or reject the application for grant.

(6) The Federal share for each State grant under (1) or (2) of this section may be up to 90 percent. Different percentage distribution among the States shall be established on the basis of objective criteria.

(7) Authorizes the Secretary to make grants to States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved under section 16. The Federal share may be up to 50 percent of the total cost. Differential in allotments to the States must be based on objective criteria.

(8) The Secretary must make a report after consultation with the Secretary of Health, Education, and Welfare to the President and the Congress prior to June 30, 1973, on the experience under the grant program.

(9) Provides that the Secretary shall develop a program of collection, compilation and analysis of occupational safety and health statistics. Authorizes the Secretary to make grants to States to assist them in developing programs on such statistics, up to 50 percent of the State's total cost and to use the services of a State. Authorizes the Secretary by contract or grant to conduct research in this area, authorizes the Secretary to prescribe by regulation the necessary records that employers must file with the Secretary.

Section 21—Audits

(1) This provision provides audit procedures for recipients of grants under this act.

Section 22—Annual report

This section requires the Secretary and the Secretary of Health, Education, and Welfare to make annual reports to the President for transmittal to the Congress.

Section 23—National Commission on State Workmen's Compensation Laws

Provides for the establishment of a 15-member commission appointed by the President to study and evaluate State Workmen's compensation laws in order to determine if such laws provide an adequate system of compensation for injury or death arising out of or in the course of employment.

The Commission must report its findings to the President and Congress no later than October 1, 1973.

The Commission is authorized in carrying out its objectives to hold hearings, compensate its members and appoint a staff and compensate them.

This section authorizes the necessary funds to be appropriated to carry out the provisions of this section.

Section 24—Economic assistance to small businesses

Amends the Small Business Act to facilitate loans to small businesses involved in altering their equipment or operations in order to comply with standards issued under section 6 of the Occupational Safety and Health Act.

Section 25—Additional Assistant Secretary of Labor

Provides for the appointment of an Assistant Secretary of Labor for Occupational Safety and Health.

Section 26—Separability

This section contains the usual separability provision.

Section 27—Appropriations

This section authorizes the appropriations necessary to carry out the act.

Section 28—Effective date

This section provides that the act will become effective at the beginning of the first month which begins more than 30 days after its enactment.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman.

TITLE 18. CRIMES AND CRIMINAL PROCEDURE

* * * * *

§ 111. Assaulting, resisting, or impeding certain officers or employees.

Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

* * * * *

§ 1114. Protection of officers and employees of the United States.

Whoever kills any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any postal inspector, any postmaster, officer, or employee in the field service of the Post Office Department, any officer or employee of the secret service or of the Bureau of Narcotics, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any

officer or employee of, or assigned to duty, in the field service of the Bureau of Land Management, any employee of the Bureau of Animal Industry of the Department of Agriculture, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare [designated by the Secretary of Health, Education, and Welfare to conduct investigations or inspections under the Federal Food, Drug, and Cosmetic Act] or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title.

TITLE 5.—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

§ 5315. Positions at level IV.

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is \$28,750:

* * * * *

(20) Assistant Secretaries of Labor [(4).] (5).

* * * * *

§ 7902. Safety programs.

(a) For the purpose of this section—

(1) “employee” means an employee as defined by section 8101 of this title; and

(2) “agency” means an agency in any branch of the Government of the United States, including an instrumentality wholly owned by the United States, and the government of the District of Columbia.

(b) The Secretary of Labor shall carry out a safety program under section 941(b)(1) of title 33 covering the employment of each employee of an agency.

(c) The President may—

(1) establish by Executive order a safety council composed of representatives of the agencies *and of labor organisations representing employees* to serve as an advisory body to the Secretary in furtherance of the safety program carried out by the Secretary under subsection (b) of this section; and

(2) undertake such other measures as he considers proper to prevent injuries and accidents to employees of the agencies.

(d) The head of each agency shall develop and support organized safety promotion to reduce accidents and injuries among employees of his agency, encourage safe practices, and eliminate work hazards and health risks.

(e) Each agency shall—

(1) keep a record of injuries and accidents to its employees whether or not they result in loss of time or in the payment or furnishing of benefits; and

(2) make such statistical or other reports on such forms as the Secretary may prescribe by regulation.

* * * * *

DEPARTMENT OF LABOR

AN ACT

To establish an office of Under Secretary of Labor, and three offices of Assistant Secretary of Labor, and to amend the existing office of Assistant Secretary of Labor and the existing office of Second Assistant Secretary of Labor.

* * * * *

SEC. 2. There are established in the Department of Labor [four] *five* offices of Assistant Secretary of Labor, which shall be filled by appointment by the President, by and with the advice and consent of the Senate. *One of such Assistant Secretaries shall be an Assistant Secretary of Labor for Occupational Safety and Health.* Each of the Assistant Secretaries of Labor shall perform such duties as may be prescribed by the Secretary of Labor or required by law.

* * * * *

SMALL BUSINESS ACT

AN ACT

To amend the Small Business Act of 1953, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title II of the Act of July 30, 1953 (Public Law 163, Eighty-third Congress), as amended, is hereby withdrawn as a part of that Act and is made a separate Act to be known as the "Small Business Act".

* * * * *

SEC. 4.

* * * * *

(c) (1) There are hereby established in the Treasury the following revolving funds: (A) a disaster loan fund which shall be available for financing functions performed under sections 636(h)(1), 636(h)(2), 636(h)(4), 636(h)(5), and 636(i)(2) of this title, including administrative expenses in connection with such functions; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 636(a), 636(b)(1), 636(e), and 637(a) of this title, titles III and V of the Small Business Investment Act of 1958, and title IV of the Economic Opportunity Act of 1964, including administrative expenses in connection with such functions.

* * * * *

SEC. 7 * * *

* * * * *

"(b) The Administration also is empowered—

* * * * *

"(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in affecting additions to or alterations in the equipment, facilities, or methods of operation of such business in order to comply with the applicable standards promulgated pursuant to section 6 of the Occupational Safety and Health Act or standards adopted by a State pursuant to a plan approved under section 18 of the Occupational Safety and Health Act, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

APPENDIX A

ADMINISTRATIVE PROCEDURE ACT OF 1946, AS CODIFIED IN TITLE 5,
UNITED STATES CODE, EXCERPTS

§ 551. Definitions

For the purpose of this subchapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia; or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts-martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744, of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes.

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency.—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section and

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief or the equivalent, or denial thereof, or failure to act.

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the findings and a brief statement of reasons therefor in the rules

issued, that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

§ 554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a hearing examiner appointed under section 3105 of this title;

(3) proceedings in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law, and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the presentation and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) in the event that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

§ 555. Ancillary matters

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceedings.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence

sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(c) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

- (1) the agency;
- (2) one or more members of the body which comprises the agency; or
- (3) one or more hearing examiners appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers employees presiding at hearings may—

- (1) administer oaths and affirmations;
- (2) issue subpoenas authorized by law;
- (3) rule on offers of proof and receive relevant evidence;
- (4) take depositions or have depositions taken when the ends of justice would be served;
- (5) regulate the course of the hearing;
- (6) hold conferences for the settlement or simplification of the issues by consent of the parties;
- (7) dispose of procedural requests or similar matters;
- (8) make or recommend decisions in accordance with section 557 of this title; and

(9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall exclude for the exclusion of irrelevant, immaterial or unduly repetitious evidence. A sanction may not be imposed or rule or order

issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554 (d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

(a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the license has been given—

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

§ 559. Effect on other laws; effect of subsequent statute

This subchapter, chapter 7, and sections 3305, 3105, 3344, 4301(2) (E), 5362, and 7521, and the provisions of section 5335 (a) (B) of this title that relate to hearing examiners, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or orders. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 3305, 3105, 3344, 4301(2) (E), 5362, or 7521 or the provisions of section 5335 (a) (B) of this title that relate to hearing examiners, except to the extent that it does so expressly.

INDIVIDUAL VIEWS OF MR. JAVITS

The bill reported herewith is the most important piece of legislation affecting American workers to be considered by Congress in many years. Each year over 14,000 Americans are killed at work, more than 2,000,000 suffer disabling injuries, and uncounted thousands fall victims to occupational diseases such as silicosis, asbestosis, bysinosis, pesticide and chemical poisoning, lung and bladder cancer, and other horrible byproducts of our industrial progress.

There is no dispute that a strong Federal occupational health and safety program is necessary if we are to achieve a real diminution in this industrial carnage. The statistics on occupational injury, disease and death show all too clearly that private industry and the States are not doing an adequate job of insuring health and safety in the workplace. Nor is there any dispute that the Federal program should include promulgation and enforcement of Federal standards, and substantial aid to those States willing to operate an occupational health and safety program that meets Federal standards.

Yet, despite the substantial agreement which exists as to the objective of this legislation, the most bitter labor-management political fight in years has erupted over the means to achieve that objective. The lines have hardened around the so-called Daniels bill, reported out by the House Education and Labor Committee (H.R. 16785) and the Administration bill, introduced by Congressmen Steiger and Sikes in the House (H.R. 19200), and by Senator Dominick in the Senate (S. 4404). All efforts to work out a fair and moderate compromise have been so far rebuffed.

In this Committee, most of the differences between the Daniels bill and the Administration bill were resolved—frequently through the adoption of amendments offered by the minority. As I shall point out below, in the wide areas where the Committee was able to reach such agreement, the provisions of the Committee bill are, in my view, clearly superior to corresponding provisions of either the Daniels or the Administration bill.

Unfortunately, the Committee was unable to resolve all the differences. The key issue which remains, and the one which has polarized labor and management, is whether the Secretary of Labor should, in addition to his functions as prosecutor shall also be given the power to promulgate standards and adjudicate enforcement cases. The Committee bill reported herewith, and the Daniels bill, would give the Secretary all of these powers, as urged by spokesmen for organized labor; the Administration bill would separate them by giving the quasi-legislative power to promulgate standards to a five-man board and the quasi-judicial power of adjudication to an independent three-man Panel, as urged (or at least acquiesced in) by spokesmen for the business community. The members of the Board and the Panel would be Presidentially appointed with the advice and consent of the Senate.

It is most regrettable that the dispute over this issue should have become so bitter as to jeopardize seriously the prospects for enactment of this bill during this session of Congress, especially since either approach has both merits and demerits. I, for one, believe that in the light of over 30 years of utterly dismal performance by the Department of Labor of its safety and health responsibilities under the Walsh-Healey Act, labor has little reason to expect, or business any reason to fear, overly energetic administration of this Act by the Secretary of Labor or disregard by him of the legitimate concerns of business. Justice Holmes' famous aphorism, "The life of the law has not been logic; it has been experience," applies as much to the process of shaping legislation as it does to deciding questions of common law.

Conversely, our experience with multimember independent administrative agencies (e.g. the National Labor Relations Board), especially in the area of quasi-judicial adjudication, has been neither so uniformly bad nor so uniformly good, or favorable to business, as compared to our experience with administration by cabinet-level officials, that we can assume that the use of such an agency would seriously weaken or strengthen this legislation. Cabinet-level officials are, it is true, more sensitive to political influences and can be held accountable for the failure of their Departments, but political influences are, at best, a two-edged sword, and completely improper, in any event, where adjudication is concerned.

Attempts at Compromise of the Basic Issue

In an attempt to resolve this obstacle to agreement by the Committee on a bill, I suggested a compromise amendment under which the Secretary of Labor would promulgate standards and a three-man independent Panel (similar to that provided in the Administration bill) would adjudicate enforcement cases. Unfortunately the Committee, after first expressing interest, rejected the compromise by a vote of 10 to 7. Since the same issue may well arise again when this bill is considered by the Senate, I believe a brief statement concerning my compromise amendment is appropriate.

In the area of adjudication, there are several reasons for preferring an independent panel approach, especially in the form proposed by the Administration and embodied in my amendment.

First, under the procedures established by the amendment, speed of enforcement would be greatly increased. In most contested cases, between six months and two years would be saved under the provisions which provide for true self-enforcing orders and discretionary review of trial examiner decisions.

Under the Committee bill, no enforceable order to correct a violation would issue until the completion of all administrative and judicial review proceedings. This would involve, at a minimum in a contested case, (1) hearings by a trial examiner, (2) mandatory review of the decision by the Secretary or his designee, and (3) review by a Court of Appeals. It is doubtful that this process could be completed in less than 18 months (two years would be a more realistic estimate) in a seriously contested case.

Under my amendment, an enforceable order would issue at the end of the administrative review stage, rather than after judicial review (unless the Court of Appeals issued a stay). Furthermore, the administrative review stage itself would be shortened by three to six months in

many cases by making review by the Panel of trial examiners' decisions discretionary. If review were denied, the trial examiners' decision would automatically become the final order of the Panel and enforceable as such.

Second, hearing and determination of enforcement cases by an independent panel more closely accords with traditional notions of due process than would hearing and determination by the Secretary. In the latter case the Secretary is essentially acting as prosecutor and judge. Any finding by the Secretary in favor of a respondent would be essentially a repudiation by the Secretary of his own Department's employees. While this type of enforcement has been used in connection with other statutes, is contemplated by the Administrative Procedures Act, and is not jurisdictionally defective on due process grounds, the awkward mechanics it imposes upon heads of Departments who wish to exercise their adjudicatory power personally in order to preserve due process has not generally been appreciated. What happens is that one official of the Department (e.g. the Deputy Solicitor) will take the position of prosecutor and another official (e.g. the Solicitor) will take the position of a neutral in order to advise the Secretary.

More important, because of the awkwardness of this procedure and the heavy burden of personally reviewing hundreds of enforcement cases, it is highly likely that the Secretary of Labor will not even exercise his power under the Committee bill personally, but will delegate it to a panel of officials within the Department. That is precisely what the Secretary of Interior has done under the Coal Mine Health and Safety Act of 1969. The net result will be enforcement by a panel anyway, but not one which is independent, and without the benefit of the shortened procedures which my amendment would provide.

These considerations, it seems to me, outweigh any possible benefits which might be gained from the better "coordination" which would allegedly occur if the adjudicatory power, as well as the prosecutorial and standards setting powers were given to the Secretary. Such coordination as is necessary would seem just as readily attainable with a Panel as with the Secretary. It is the prosecutors upon whom this burden will primarily fall and under either approach they will be under the Secretary's control.

In short, the adjudicatory scheme of the Committee bill can be made to work, and due process can be preserved under it, but the independent Panel approach would do the same job faster, preserve due process more easily, and thereby instill much more confidence in the whole program in workers and businessmen alike.

IMMINENT DANGER ORDERS

The other issue upon which the Committee was unable to reach agreement is the procedure for dealing with imminent dangers. The Committee rejected an amendment which would have required the Secretary to obtain a court order to secure prompt relief against an imminent danger. The Committee bill (properly, in my view) permits remedial orders to be issued by the Secretary for 72 hours in the case of an imminent danger. However, the Committee did adopt amendments proposed by Senator Schweiker designed to guard against abuse of discretion in the exercise of this extraordinary power. The amend-

ments provide (a) that such orders are to be issued by the Secretary or his representative only if there is not sufficient time, in light of the nature and imminence of the danger to seek and obtain a court order, (b) that no such order may be issued without the concurrence of an appropriate regional official of the Labor Department, and (c) that the Secretary must provide appropriate procedures to permit employers to obtain expeditious, informal reconsideration of such orders. None of these safeguards is contained in the Daniels bill.

RESOLUTION OF OTHER ISSUES—MINORITY AMENDMENTS

On the numerous other issues involved in this legislation the Committee was able to reach virtually complete agreement. Many of the more difficult problems were resolved, and the bill thereby strengthened, through the adoption of amendments offered by members of the minority. Among the more important of these amendments are the following:

JAVITS AMENDMENTS

1. *National Institute of Occupational Health and Safety*—This amendment would establish a new institute, to be known as the National Institute of Occupational Health and Safety in the Department of Health, Education, and Welfare. The establishment of this institute will elevate the status of occupational health and safety research to place it on an equal footing with the research conducted by HEW into other matters of vital social concern, particularly in the health area. Such an institute will be able to attract the qualified personnel necessary to engage in occupational health and safety research if we are to make any real progress in reducing job-related injury and disease under the Act, and will much more easily attract the substantial increase in funding which will be necessary to achieve the purposes of this act.

Equally important, the research and recommendations of the institute will be of critical importance in continually improving occupational health and safety standards promulgated under this act. The primary source of these standards at this time are the various consensus and proprietary organizations such as the American National Standards Institute and the American Conference of Governmental and Industrial Hygienists. Without in any way denigrating the substantial contributions to occupational health and safety which such organizations have already made, and which they will undoubtedly continue to make, it is apparent that the government must develop a capacity for developing these standards which will operate independently of self interest groups.

2. *National Commission on Workers' Compensation*—The Committee bill includes provisions establishing a broadly based fifteen member national commission on State workmen's compensation law. As this report points out elsewhere, serious questions have been raised concerning the adequacy of existing State workmen's compensation programs. The study and recommendations of this commission will be of invaluable assistance in upgrading these programs and in determining what, if any, further action by the federal government should be taken in this area.

3. *Economic Assistance to Small Business (with Senators Dominick and Sarbe).*—This amendment authorizes loans to small businesses adversely affected by the need to comply with this act. Similar provisions are included in both the Administration and the Daniels bills.

4. *Feasibility of Standards.*—As a result of this amendment the Secretary, in setting standards, is expressly required to consider feasibility of proposed standards. This is an improvement over the Daniels bill, which might be interpreted to require absolute health and safety in all cases, regardless of feasibility, and the Administration bill, which contains no criteria for standards at all.

5. *Modification of General Duty.*—As the result of this amendment the general duty of employers was clarified to require maintenance of a workplace free from "recognized" hazards. This is a significant improvement over the Administration bill, which requires employers to maintain the workplace free from "readily apparent" hazards. That approach would not cover non-obvious hazards discovered in the course of inspection. It is also better than the corresponding provision of the Daniels bill which embraces all hazards. In addition, the provisions of the Committee bill which provide a penalty only for failure to correct a violation of the general duty requirement are better than the provisions of the Administration bill which impose a penalty on an employer for his initial violation of the duty, as well as his failure to correct it.

6. *Confidentiality of Inspection Reports and Other Material.*—Under this amendment publication of ordinarily confidential matter, such as inspection reports, is left to the discretion of the Secretary, rather than required, as is the case under the Daniels bill.

DOMINICK AMENDMENTS

1. *Modification of State plan provisions to exclude employees of political subdivisions not subject to the jurisdiction to the States.*—This amendment removed what might operate as a substantial impediment to the ability of the States to adopt plans meeting federal requirements by limiting the States' responsibility to adopt a safety program for State and local employees only to those employees over which they have jurisdiction and authority in this respect.

2. *Protection of trade secrets.*—This amendment provided protection against disclosure of trade secrets in enforcement proceedings by requiring the Secretary or the court to issue appropriate orders for the protection of the confidentiality of trade secrets.

3. *Reopening of abatement order.*—Under this amendment the language of the bill was modified to make it clear that in the event of factors beyond the employers' control preventing him, in good faith, from complying with an abatement order which has previously become final, he may apply for modification of the order to the Secretary. No such provision is contained in either the Daniels bill or the Administration bill.

SAXBE AMENDMENTS

1. *Right of employees and their representatives to accompany inspectors.*—As a result of this amendment the provisions of both the Administration and the Daniels bills permitting authorized representatives of employees to accompany inspectors have been clarified and protected from abuse by provisions making such right clearly subject to

regulations of the Secretary, defining the purpose of such accompaniment as aid of the inspection, and extending mandatory consultation rights to a reasonable number of employees where there is no "authorized" representative of employees. In the absence of such provisions the Secretary might well find himself required to resolve union organizing issues which have no relationship to this legislation.

2. *Limitation on use of shortened procedures for adoption of proprietary standards.*—Under this amendment the use of somewhat shortened procedures, a hearing would be discretionary for promulgation of proprietary standards is limited to proprietary standards adopted prior to the date of enactment of this act. This will avoid the possibility of proprietary groups adopting or modifying standards because of the possibility that they can be more easily adopted under this act. The discretionary provisions of the Committee bill concerning the adoption of such standards are much better than those of the Administration bill, which does not provide any shortened procedure for the adoption of such standards, and those in the Daniels bill which require the adoption of virtually all such standards.

3. *Inspections on demand.*—As a result of this amendment the provisions of the bill requiring an inspection to be conducted by the Secretary as soon as possible upon receipt of a notice from employees alleging a violation of standards or imminent danger were modified to require such an inspection as soon as practicable only if the Secretary determines there are reasonable grounds to believe that an alleged violation or danger exists. This will ensure that inspections are not required in response to groundless complaints, and will permit the Secretary to schedule such inspections more flexibly.

4. *Payment by the government of the cost of research and medical examinations.*—These amendments provided for the furnishing of assistance by the federal government to employers for additional expenses incurred by them in conducting monitoring and measuring required by the Secretary of Health, Education, and Welfare for research purposes, and for payment by the government of the costs of medical examinations required by standards where such examinations are in the nature of research.

JACOB K. JAVITS.

INDIVIDUAL VIEWS OF MR. SAXBE

I too favored and voted for the independent board approach to the promulgation and enforcement of occupational health and safety standards. The concentration of power within the Department of Labor as proposed by the reported bill would not promote the stated objectives of the legislation. These objections are more fully stated in the minority views.

I voted in favor of reporting the committee bill, however, because I believe legislation on this subject should be considered by the Senate. Each year more than 14,000 people are killed as a result of occupational accidents. More than 2,000,000 persons are disabled. 250,000 days of labor are lost each year. The problem is not improving.

I also agree with the minority objection to the imminent danger provision permitting an inspector, upon consultation with regional personnel to issue an order for immediate remedial action including closing of a plant or department. Although the Committee accepted an amendment which required consultation with regional personnel, I still believe that an inspector finding a hazardous condition should seek injunctive relief in the courts.

WILLIAM B. SAXBE.

MINORITY VIEWS OF MESSRS. DOMINICK AND SMITH OF ILLINOIS

I. THE NEED FOR LEGISLATION

The need for occupational safety and health legislation is well-recognized in this Nation today. Over and over again the statistics relating to injury, death, and disease in American industry have been brought to the attention of Congress. The need has also been recognized by the President of the United States in three separate messages.

It is our belief that all members of Congress are in accord with the President in his desire to provide a legislative answer to the safety and health problems of our Nation's workforce. The law which we provide must call for the promulgation of strong standards to insure occupational health and safety. The bill we pass must be workable and effective. This means the bill must establish realistic mechanisms which call not only for the development and enforcement of strong standards but will also be fair and accord all parties, including employers subject to regulation, due process.

We do not believe that the Committee bill provides the mechanisms which will meet these objectives. The narrow, single-minded approach of the bill fails to provide due process to those subject to regulation. The procedures it provides are unworkable and not truly effective. The bill also fails to adequately utilize all resources available to combat the problem and hence fails to meet the needs of our workforce. Indeed, the bill is opposed by the Administration, employers, State occupational health and safety agencies, and by national standards producing organizations while its primary support comes from the leadership of large unions. Therefore, we are unable to support the bill in its present form and urge the consideration of the alternatives discussed below.

The basic scheme of the bill, as reported, is this. All authority for action is concentrated in the office of the Secretary of Labor. He will promulgate the standards of safety and health. He will conduct inspections and investigations to detect violations of the standards. He will charge those he believes have violated the standards by citation and penalty assessments. Upon any challenge of penalty assessment or issuance of a citation, the Secretary or his agent must defend the penalty or citation against the challenge. The Secretary is also responsible for hearing any such challenge and issuing an order affirming, denying, or modifying the original penalty or citation. Finally, the Secretary will be authorized to defend his order or seek its enforcement in the Court of Appeals. All functions, including standard setting, investigation, prosecution, adjudication, and review are settled in the hands of the Secretary.

The philosophy of this approach by the Majority is clear. All power and authority must be centralized in the hands of a single person—

the Secretary of Labor. Few safeguards or restrictions are to be placed on the authority of the Secretary.

In one sense, the concentration of power into the hands of a single person is obviously more efficient—provided that person exercises that power in accord with the wishes of those who concentrate the power. The concentration of power also simplifies the problems of those who wish to persuade the Secretary to accept a particular point of view.

While the concentration of authority may lead to more efficient action in line with a particular point of view, it also raises the sceptre of abuse. A single man is easier to harass than an independent standards board or quasi-judicial panel. With the concentration of power in the hands of one man, he will be subject to intense political pressure to act a particular way. If he fails to act in accord with the wishes of a particular group, he may be subjected to court action for tort liability.

The concentration of authority in the hands of the Secretary necessarily precludes the utilization of other approaches to achieve compliance. The scheme of enforcement established by the bill effectively discourages positive State and private initiative.

Private initiative is encouraged only through the strong negative incentive program. Employers are faced with swift inspections, swift penalties and virtually self-enforcing orders. The punitive powers of the Secretary are the keystone of the enforcement process. The Secretary issues the citation and the assessment of penalty prior to any hearing. Only through an appeal can the employer challenge the administrative determination of a violation. And then, under the bill, the appeal is to the Secretary for relief. This approach does not encourage voluntary compliance. It does not place emphasis on cooperation between employers, employees and the regulatory agent. Its focus is on motivation through "the stick" rather than through "the carrot." Indeed, this approach is apparently based on the erroneous assumption that most employers are actively and maliciously seeking to avoid safety and health responsibilities.

The role of state governments in the regulatory scheme is also limited. A state may assume responsibility for regulation only on the submission of a stringent state plan. The Secretary must monitor the plan and has authority to revoke it if he finds it does not meet the strict requirements of the plan.

However, while we find the scheme advanced by the bill as reported to be objectionable, we believe that the broad objectives of the bill can be achieved. We believe that the need for regulation and the need for procedural safeguards can be reconciled. We urge the consideration of alternatives which will achieve the desired substantive regulation yet will supply the procedural safeguards necessary for fair determination of rights, responsibilities, and obligations of all parties.

II. ALTERNATIVES

As noted above, the concentration of all authority in the hands of the Secretary of Labor is the great failing of the bill as reported. There are two alternatives which will cure this objection.

First, the bill should provide for an Occupational Safety and Health Board. The Board would be composed of five members, appointed by the President, who would designate the Chairman from among

the Board Members. A background in the field of occupational health and safety would be required for at least three members.

The Board approach is the soundest approach to standard-promulgation for several reasons.

One, the development of occupational health and safety standards involves technical and complex problems requiring professional expertise and competence. Establishing a separate Board of competent professional experts will bring far greater expertise to the job of establishing standards than the Secretary of Labor with all of this other job functions can achieve.

Two, since the standards to be established under this Act involve both health and safety, the resources of HEW as well as the Labor Department must be closely coordinated. The independent Board assures that both aspects are given equal consideration and that their policies and practices in this area are uniform.

Three, the establishing of an independent Board for standard-promulgation will separate the quasi-legislative function from the enforcement function of the Secretary. The Board can be held responsible for the development of standards. It can concentrate on using the expertise of its members to develop the technological rules necessary to maintain health and safety. The Secretary will not be placed in the intolerable position of being called to task for rule-making responsibilities and enforcement responsibilities. Further, as is usual in administrative agency situations, there will be no difficulty in telling who is wearing what hat when. A separate Board whose members are professional experts will achieve a far greater degree of public confidence than a Secretary of Labor who combines the roles of rule-maker, inspector, prosecutor, and adjudicator of violations.

In addition to the separation of the quasi-legislative function from the inspection and prosecution functions, the quasi-judicial function should be removed from the hands of the Secretary and placed in an independent panel. After investigation and inspection, the Secretary issues a citation which sets forth the violation and the order necessary to correct the violation.

At this point, under the bill, the party aggrieved by such an order must appeal to the Secretary. We believe that traditional concepts of due process dictate that this function be carried out by a panel independent of the Secretary. This will obviate the inevitable conflict which arises when the Secretary must review his own actions as carried out by the various subordinate levels of the Department.

In addition to the two key provisions mentioned above, there are other provisions of the committee bill which we feel are contrary to a proper balance between the need for regulation and the need for safeguards. These provisions carry a potential for abuse which may lead to a lack of confidence in the enforcement of this important legislation. They also follow the single minded punitive approach of the Majority rather than seeking true compliance with the objectives of this bill. These provisions include:

(1) The imminent danger provision permitting an inspector, upon consultation with Regional personnel, to issue an order for immediate remedial action including closing of a plant or department.

(2) The so called walk around provision which requires an inspector to permit an authorized representative of employees to

accompany the inspector on any physical tour of a plant or business operation.

Therefore, we respectfully urge that consideration be given to modifying the committee bill to remedy the deficiencies. We believe that a compromise which adequately balances the need for regulation with the concerns which we have expressed must be reached. The modifications we have suggested do not destroy the essential elements of the regulatory process. The bill provides for standard-setting, inspection, and investigation, enforcement and adjudication. However, these functions will be carried out within a framework of due process and all interests will be properly balanced.

PETER H. DOMINICK,
RALPH TYLER SMITH.

Calendar No. 1300

81ST CONGRESS
2D SESSION**S. 2193**

[Report No. 91-1282]

IN THE SENATE OF THE UNITED STATES

MAY 16, 1969

Mr. WILLIAMS of New Jersey (for himself, Mr. KENNEDY, Mr. MONDALE, Mr. YARBROUGH, Mr. HART, and Mr. TYDINGS) introduced the following bill: which was read twice and referred to the Committee on Labor and Public Welfare

OCTOBER 6 (legislative day, OCTOBER 5), 1970

Reported by Mr. WILLIAMS of New Jersey, with an amendment

(Strike out all after the enacting clause and insert the part printed in *italics*)**A BILL**

To authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That this Act may be cited as the "Occupational Safety and*
- 4 *Health Act of 1969".*

H—O

1 ~~CONGRESSIONAL FINDINGS AND PURPOSE~~

2 ~~SEC. 2. (a) The Congress finds that personal injuries~~
3 ~~and illnesses arising out of work situations which result in~~
4 ~~death or disability impose a substantial burden upon, and are~~
5 ~~a hindrance to, interstate commerce in terms of lost produc-~~
6 ~~tion, wage loss, medical expenses, and disability compensa-~~
7 ~~tion payments.~~

8 ~~(b) The Congress declares it to be the purpose and~~
9 ~~policy, through the exercise by Congress of its powers to~~
10 ~~regulate commerce among the several States and with foreign~~
11 ~~nations and to provide for the general welfare, to assure so~~
12 ~~far as possible every working man and woman in the Nation~~
13 ~~safe and healthful working conditions—~~

14 ~~(1) by establishing mandatory occupational safety~~
15 ~~and health standards applicable to businesses affecting~~
16 ~~commerce;~~

17 ~~(2) by providing for the effective enforcement of~~
18 ~~such safety and health standards;~~

19 ~~(3) by providing for research relating to occupa-~~
20 ~~tional safety and health;~~

21 ~~(4) by providing for training programs to increase~~
22 ~~and improve personnel engaged in the field of occupa-~~
23 ~~tional safety and health;~~

24 ~~(5) by more clearly delineating the responsibilities~~

1 of the Federal Government and the States in their ac-
2 tivities related to occupational safety and health;

3 (6) by providing grants to the States to assist them
4 in identifying their needs and responsibilities in the
5 area of occupational safety and health, to develop plans
6 in accordance with the provisions of this Act, and to
7 conduct experimental and demonstration projects in
8 connection therewith; and

9 (7) by providing for appropriate accident and
10 health reporting procedures which will help achieve
11 the objectives of this Act.

12 ~~STANDARDS~~

13 SEC. 3. (a) For purposes of this section:

14 (1) The term "occupational safety and health stand-
15 ard" means a standard which requires conditions, or the
16 adoption or use of one or more practices, means, methods,
17 operations, or processes, reasonably necessary to provide
18 safe or healthful employment and places of employment.

19 (2) The term "national consensus standard" means
20 any occupational safety or health standard adopted under
21 a consensus method by a nationally recognized standards
22 producing organization.

23 (3) The term "established Federal standard" means
24 any occupational safety or health standard already estab-

lished by any agency of the United States, or contained in any Act of Congress in force on the date of enactment of this Act, but before the exercise by the Secretary, with respect to the issues covered by such standards, of his authority under section 13.

(b) Except as provided in section 12 (h) of this Act, each employer engaged in a business affecting commerce shall comply with occupational safety and health standards promulgated by the Secretary. Such standards shall be promulgated, modified or revoked by the Secretary by rule in accordance with subsection (c), (d), (e), or (f).

(c) The Secretary may by rule promulgate any occupational safety and health standard which is a national consensus standard. If the nationally recognized standards producing organization which adopted the national consensus standard upon which an occupational safety and health standard promulgated under this subsection was based modifies or revokes such national consensus standard under a consensus method, the Secretary may by rule modify or revoke the standard promulgated by him to the same extent. Section 553 of title 5, United States Code, shall not apply to any rule issued under this subsection.

(d) The Secretary may by rule promulgate any occupational safety and health standard which is an established

1 Federal standard. Section 553 of title 5, United States Code,
2 shall not apply to any rule issued under this subsection.
3 Subsection (f) shall apply to the modification or revocation
4 of any standard promulgated under this subsection.

5 (e) The Secretary may by rule promulgate an interim
6 occupational safety and health standard which is a standard
7 proposed by a nationally recognized standards producing
8 organization by other than a consensus method, whenever he
9 finds (and incorporates the finding and a brief statement of
10 the reasons therefor in the rule issued) that such rule making
11 without the notice and procedures provided by subsection
12 (f) of this section and by section 553 of title 5, United
13 States Code, is necessary in the public interest. Such a stand-
14 ard may remain in effect for not more than six months from
15 its effective date, except that the Secretary may extend such
16 interim standard for an additional twelve months if at the
17 time he originally promulgates such a standard he com-
18 mences (by appointing an advisory committee) a proceeding
19 under subsection (f) dealing with the same subject matter
20 as the interim standard, and such additional occupational
21 safety or health issues as he deems relevant. If an interim
22 standard is promulgated under this subsection, no additional
23 standard dealing with the same subject may be promulgated

1 ~~except in the manner required by subsection (c), (e), or~~
2 ~~(f) of this section.~~

3 ~~(f) The Secretary may, by rule, promulgate, modify~~
4 ~~or revoke any occupational safety and health standard in the~~
5 ~~following manner:~~

6 ~~(1) Whenever the Secretary is of the opinion such~~
7 ~~a rule should be prescribed, he shall appoint an advisory~~
8 ~~committee under section 4 (b) of this Act, which shall~~
9 ~~submit to him within two hundred and seventy days from~~
10 ~~its appointment or within such longer period as may be~~
11 ~~prescribed by the Secretary, its recommendations regard-~~
12 ~~ing the rule to be prescribed, which recommendations~~
13 ~~shall be published by the Secretary in the Federal Reg-~~
14 ~~ister, either as part of a subsequent notice of hearing or~~
15 ~~separately.~~

16 ~~(2) After the submission of such recommendations,~~
17 ~~the Secretary shall schedule and give notice of a hearing~~
18 ~~on the recommendations of the advisory committee and~~
19 ~~any other relevant subjects and issues. In the event that~~
20 ~~the advisory committee fails to submit recommendations~~
21 ~~within two hundred and seventy days from its appoint-~~
22 ~~ment (or such longer period as the Secretary has pre-~~
23 ~~scribed) he may schedule and give notice of a hearing on~~
24 ~~any proposal relevant to the purpose for which the ad-~~
25 ~~visory committee was appointed. In either case, notice of~~

1 the time and place of any such hearing shall be published
2 in the Federal Register thirty days prior to the hearing
3 and shall contain the recommendations of the advisory
4 committee or the proposal made in absence of such rec-
5 ommendation. Prior to the hearing interested persons
6 shall be afforded an opportunity to submit comments
7 upon the recommendations of the advisory committee
8 or other proposal. Only persons who have submitted such
9 comments shall have a right at such hearing to submit
10 oral or written evidence, data, views, or arguments.

11 (3) Upon the entire record before him, including
12 the advisory committee recommendations and any evi-
13 dence, data, views, and arguments submitted in connec-
14 tion with the hearing, the Secretary may issue a rule
15 promulgating, modifying, or revoking an occupational
16 safety and health standard. The rule shall not become
17 effective for at least thirty days after publication in the
18 Federal Register.

19 (2) This Act shall not apply with respect to employ-
20 ment performed in a workplace within a foreign country or
21 within territory under the jurisdiction of the United States
22 other than the following: a State, Outer Continental Shelf
23 lands defined in the Outer Continental Shelf Lands Act;
24 American Samoa; Wake Island; Eniwetok Atoll; Kwajalein
25 Atoll; Johnston Island; and the Canal Zone.

~~ADMINISTRATION; ADVISORY COMMITTEES~~

~~SEC. 4. (a) In carrying out his responsibilities under this Act, the Secretary is authorized to—~~

~~(1) use, with the consent of any Federal agency, the services, facilities, and employees of such agency with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or subdivision with or without reimbursement; and~~

~~(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of \$100 per diem, including traveltime; and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.~~

~~(b) The Secretary shall appoint advisory committees to recommend occupational safety and health standards under section 3 (f) (1) of this Act. Each such advisory committee shall include among its members an equal number of persons~~

1 ~~qualified by experience and affiliation to present the view-~~
2 ~~point of the employers involved, and of persons similarly~~
3 ~~qualified to present the viewpoint of the worker involved,~~
4 ~~as well as one or more representatives of health or safety~~
5 ~~agencies of the States, one or more representatives of pro-~~
6 ~~fessional organizations of technicians or professionals~~
7 ~~specializing in occupational safety or health, and one~~
8 ~~or more representatives of nationally recognized standards~~
9 ~~producing organizations. An advisory committee may also~~
10 ~~include such other persons as the Secretary may appoint~~
11 ~~who are qualified by knowledge and experience to make a~~
12 ~~useful contribution to the work of the committee, but the~~
13 ~~number of persons so appointed to any advisory committee~~
14 ~~shall not exceed the number appointed to such committee~~
15 ~~as representatives of State agencies, professional organiza-~~
16 ~~tions, and standards producing organizations. Persons ap-~~
17 ~~pointed to advisory committees from private life shall be~~
18 ~~compensated in the same manner as consultants or experts~~
19 ~~under subsection (a) (2) of this section. The Secretary shall~~
20 ~~pay to any State which is the employer of a member of the~~
21 ~~committee who is a representative of the health or safety~~
22 ~~agency of that State, reimbursement sufficient to cover the~~
23 ~~actual cost to the State resulting from such representative's~~
24 ~~membership on the committee.~~

1 ~~(e) (1) The Secretary shall appoint a National Advi-~~
2 ~~sory Committee on Occupational Safety and Health (here-~~
3 ~~after in this subsection referred to as "Committee")~~
4 ~~consisting of sixteen members appointed without regard to~~
5 ~~the civil service laws and composed equally of representa-~~
6 ~~tives of management, labor, occupational safety and health~~
7 ~~professions, and the public. The Secretary shall designate~~
8 ~~one of the public members as Chairman. The members shall~~
9 ~~be selected upon the basis of their experience and competence~~
10 ~~in the field of occupational safety and health.~~

11 ~~(2) The Committee shall advise, consult with, and~~
12 ~~make recommendations to, the Secretaries of Labor and~~
13 ~~Health, Education, and Welfare on matters relating to the~~
14 ~~administration of this Act. The Committee shall hold no~~
15 ~~fewer than two meetings during each calendar year.~~

16 ~~(3) The members of the Committee shall be compensated~~
17 ~~in accordance with the provisions of subsection (a) (2) of~~
18 ~~this section.~~

19 ~~(4) The Secretary shall furnish to the Committee an~~
20 ~~executive secretary and such secretarial, clerical, and other~~
21 ~~services as are deemed necessary to the conduct of its business.~~

22 ~~INSPECTIONS AND INVESTIGATIONS~~

23 ~~SEC. 5. (a) In order to carry out the purposes of this~~
24 ~~Act, the Secretary, upon presenting appropriate credentials~~
25 ~~to the owner, operator, or agent in charge, is authorized—~~

1 ~~(1) to enter upon at reasonable times any factory,~~
2 ~~plant, establishment, mine, construction site, or other~~
3 ~~area, workplace, or environment where work is per-~~
4 ~~formed by an employee of an employer or on a contract~~
5 ~~described in section 10 (a); and~~

6 ~~(2) to inspect and investigate during regular work-~~
7 ~~ing hours and at other reasonable times, and within~~
8 ~~reasonable limits and in a reasonable manner, any such~~
9 ~~area, workplace, or environment, and all pertinent condi-~~
10 ~~tions, structures, machines, apparatus, devices, equip-~~
11 ~~ment, and materials therein, and to question any such~~
12 ~~employee.~~

13 ~~(b) For the purpose of carrying out his duties under~~
14 ~~this Act, the Secretary may delegate his authority under this~~
15 ~~section to any agency of the Federal Government with or~~
16 ~~without reimbursement, and, with its consent and with or~~
17 ~~without reimbursement and under conditions the Secretary~~
18 ~~may prescribe, to any appropriate State agency or agencies~~
19 ~~designated by the Governor of the State.~~

20 ~~Sec. 6. (a) (1) If, upon inspection or investigation,~~
21 ~~the Secretary determines that any employer has violated any~~
22 ~~standard promulgated under section 3 or that any person has~~
23 ~~violated any regulation prescribed under subsection (b) of~~
24 ~~this section or any contractual requirement of section 10 (a),~~
25 ~~he shall hold a hearing (in accordance with section 554 of~~

1 title 5, United States Code, but without regard to subsec-
2 tion (a) (3) of such section), and shall issue such orders,
3 and make such decisions, based upon findings of fact, as are
4 deemed to be necessary to enforce such standard, regulation,
5 or requirement. The Secretary shall give such person the in-
6 formation required by section 554 (b) of such title at least 15
7 days prior to hearing. The Secretary shall have the power
8 to issue orders requiring the attendance and testimony of
9 witnesses and the production of evidence under oath. Wit-
10 nesses shall be paid the same fees and mileage that are
11 paid witnesses in the courts of the United States. In case of
12 contumacy, failure, or refusal of any person to obey such
13 an order, any district court of the United States or the
14 United States courts of any territory or possession, within
15 the jurisdiction of which the inquiry is carried on, or within
16 the jurisdiction of which such person is found, or resides or
17 transacts business, upon the application by the Secretary,
18 shall have jurisdiction to issue to such person an order
19 requiring such person to appear to produce evidence if, as,
20 and when so ordered, and to give testimony relating to the
21 matter under investigation or in question; and any failure
22 to obey such order of the court may be punished by said
23 court as a contempt thereof.

24 (2) If an inspection or investigation discloses (A) that
25 an employer has violated a standard promulgated under sec-

1 tion 3 or that any person has violated a contractual require-
 2 ment of section 10 (a), and (B) that conditions or practices
 3 in such place of employment are such that a danger exists
 4 which could reasonably be expected to cause death or serious
 5 physical harm immediately or before the imminence of such
 6 danger can be eliminated, the Secretary may (notwith-
 7 standing the provisions of paragraph (1) of this subsection)
 8 issue an order providing for the immediate cessation of such
 9 violation and for the prohibition of the employment of any
 10 individuals in locations or under conditions where such
 11 violations exist, except to correct or remove the violation.
 12 Such order may remain in effect during the pendency of
 13 any proceeding under paragraph (1) of this subsection.

14 (b) Each employer shall make, keep, and preserve, and
 15 make available to the Secretary such records concerning the
 16 requirements of section 3 of this Act, and shall make reports
 17 therefrom to the Secretary, as he may prescribe by regula-
 18 tion or order as necessary or appropriate for the enforcement
 19 of this Act.

20 ~~ARTICLE FOUR~~

21 Sec. 7. (a) The district courts of the United States
 22 shall have jurisdiction to enforce any restraining order, in-
 23 junction, or otherwise any order of the Secretary under
 24 section 6(a) of this Act. Any person aggrieved by an order

1 ~~issued under section 6 (a) may obtain review thereof by~~
2 ~~such courts based upon the record before the Secretary.~~

3 ~~(b) If the Secretary arbitrarily or capriciously issues an~~
4 ~~order under section 6 (a) (2) and the person to whom the~~
5 ~~order is directed is injured in his business or property by~~
6 ~~reason of such order, such person may bring an action against~~
7 ~~the United States in the Court of Claims in which he may~~
8 ~~recover the damages he has sustained.~~

9 ~~CONFIDENTIALITY OF TRADE SECRETS~~

10 ~~SEC. 8. In connection with any proceeding under this~~
11 ~~Act no witness or any other person shall be required to~~
12 ~~divulge trade secrets or secret processes.~~

13 ~~PENALTIES~~

14 ~~SEC. 9. (a) Any employer who violates any standard~~
15 ~~promulgated under section 3 of this Act or any person who~~
16 ~~violates any regulation prescribed under section 6 or~~
17 ~~any contractual requirement of section 10 (a), may be as-~~
18 ~~sessed by the Secretary, pursuant to an order issued under~~
19 ~~section 6 (a) (1) of this Act, a civil penalty of not more than~~
20 ~~\$1,000 for each violation. Each violation shall be a separate~~
21 ~~offense. When the violation is of a continuing nature, each~~
22 ~~day during which it continues after a reasonable time speci-~~
23 ~~fied in an order issued under section 6 (a) (1) shall constitute~~
24 ~~a separate offense except during the time a review of the~~
25 ~~order under section 6 (a) (1) may be taken, or such review~~

1 ~~is pending, and during the time allowed in the order under~~
2 ~~section 6 (a) (1) for correction. The Secretary may compro-~~
3 ~~mise, mitigate, or settle any claim for civil penalties. In as-~~
4 ~~sessing the penalty, consideration shall be given to the~~
5 ~~appropriateness of the penalty to the size of the business of~~
6 ~~the person charged and the gravity of the violation.~~

7 ~~(b) Any person who willfully violates or fails or refuses~~
8 ~~to comply with any order issued under section 6 (a)~~
9 ~~of this Act shall be guilty of a misdemeanor, and upon con-~~
10 ~~viction shall be punished by a fine of not more than \$5,000~~
11 ~~or by imprisonment for not more than six months, or by both~~
12 ~~such fine and imprisonment; except that if the conviction~~
13 ~~is for a violation committed after a first conviction of such~~
14 ~~person, punishment shall be by a fine of not more than~~
15 ~~\$10,000 or by imprisonment for not more than one year, or~~
16 ~~by both such fine and imprisonment.~~

17 ~~(c) Any person who forcibly assaults, resists, opposes,~~
18 ~~impedes, intimidates, or interferes with any person while~~
19 ~~engaged in or on account of the performance of inspection~~
20 ~~or investigatory duties under this Act shall be fined not~~
21 ~~more than \$5,000 or imprisoned not more than three years,~~
22 ~~or both. Whoever, in the commission of any such act, uses~~
23 ~~a deadly or dangerous weapon, shall be fined not more than~~
24 ~~\$10,000 or imprisoned not more than ten years, or both.~~
25 ~~Whoever hits any person while engaged in or on account~~

1 of the performance of inspecting or investigating duties under
2 this Act shall be punished by imprisonment for any term of
3 years or for life.

4 (d) Any person who gives advance notice of any in-
5 spection to be conducted under this Act, without authority
6 from the Secretary, or his designees, shall be fined not
7 more than \$10,000 or imprisoned not more than five years,
8 or both.

9 ~~GOVERNMENT CONTRACTS~~

10 ~~SEC. 10. (a) Each contract exceeding \$2,500 and~~
11 ~~requiring or involving the employment of any person (1)~~
12 ~~to which the United States or any agency or instrumentality~~
13 ~~thereof, or the District of Columbia is a party, (2) which~~
14 ~~is made for or on behalf of the United States, any agency~~
15 ~~or instrumentality thereof, or the District of Columbia,~~
16 ~~or (3) which is financed in whole or in part by loans or~~
17 ~~grants from, or loans insured or guaranteed by, the United~~
18 ~~States or any agency or instrumentality of the United States,~~
19 ~~shall include the requirement that no part of such contract~~
20 ~~(or any subcontract thereunder) will be performed in any~~
21 ~~place or under any conditions which do not meet the applica-~~
22 ~~ble occupational safety and health standards. The applicable~~
23 ~~occupational safety and health standards shall be the stand-~~
24 ~~ards promulgated by the Secretary under section 3 of this~~
25 ~~Act, except that, to the extent that the contract will be per-~~

1 ~~formed in a State in which there is in effect a State plan~~
2 ~~approved under section 12 (d) which provides for the de-~~
3 ~~velopment and enforcement of safety and health standards~~
4 ~~relating to one or more occupational safety or health issues,~~
5 ~~the applicable occupational safety and health standards relat-~~
6 ~~ing to such issues shall be those developed and enforced under~~
7 ~~the State plan rather than those promulgated by the Secre-~~
8 ~~tary under section 3.~~

9 ~~(b) In promulgating standards under section 3 of this~~
10 ~~Act, the Secretary shall to the extent feasible conform such~~
11 ~~standards to those occupational safety and health standards~~
12 ~~established under other laws administered by him.~~

13 ~~(c) In addition to the remedies otherwise provided in~~
14 ~~this Act, the Secretary may declare ineligible to receive any~~
15 ~~contract described in subsection (a) of this section any per-~~
16 ~~son or firm, or any firm, corporation, partnership, or associa-~~
17 ~~tion in which such person or firm has a controlling interest,~~
18 ~~which is found to have disregarded its obligations under this~~
19 ~~section until such person or firm has satisfied the Secretary~~
20 ~~that it will comply with the requirements of this section.~~

21 ~~(d) In addition to the remedies otherwise provided in~~
22 ~~this Act, the Secretary may recommend to the appropriate~~
23 ~~contracting agency that such agency cancel, terminate, sus-~~
24 ~~pend, or cause to be canceled, or suspended, any contract~~

~~made by any contracting agency for the failure of the contractor to comply with an order of the Secretary issued under section 6 (a) (1) of this Act for the breach or violation by such employer of the requirements under subsection (a) of this section.~~

~~VARIATIONS, TOLERANCES, AND EXEMPTIONS~~

~~SEC. 11. The Secretary may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business. The Secretary shall keep an appropriately indexed record of all variations, tolerances, and exemptions granted under this section, which shall be open for public inspection.~~

~~EFFECTIVE DATE: FEDERAL STATE RELATIONSHIP~~

~~SEC. 12. (a) (1) Except as otherwise provided in this section, this Act shall be effective on the first day of the first month after the date of its enactment.~~

~~(2) Sections 6, 7, 9, and standards promulgated under section 3 shall not take effect until July 1, 1970. Section 10 shall not apply to contracts entered into before July 1, 1970.~~

~~(b) Nothing in this Act shall be deemed to prevent any State agency or court from asserting jurisdiction over any~~

1 ~~occupational safety or health issue with respect to which~~
2 ~~no standard is in effect under section 3.~~

3 ~~(c) Any State which, at any time, desires to assume~~
4 ~~responsibility for development and enforcement in such State~~
5 ~~of occupational safety or health standards relating to any~~
6 ~~occupational safety or health issue with respect to which~~
7 ~~a Federal standard has been promulgated under section 3~~
8 ~~shall submit a State plan for the development of such stand-~~
9 ~~ards and their enforcement.~~

10 ~~(d) The Secretary shall approve the plan submitted~~
11 ~~by a State under subsection (c), or any modification thereof,~~
12 ~~if such plan in his judgment—~~

13 ~~(1) designates a State agency or agencies as the~~
14 ~~agency or agencies responsible for administering the plan~~
15 ~~throughout the State,~~

16 ~~(2) provides for the development and enforcement~~
17 ~~of safety and health standards relating to one or more~~
18 ~~safety or health issues, which standards (and the en-~~
19 ~~forcement of which standards) are or will be substan-~~
20 ~~tially as effective in providing safe and healthful~~
21 ~~employment and places of employment as the standards~~
22 ~~promulgated under section 3 which relate to the same~~
23 ~~issues,~~

1 ~~(3) provides for the effective right of entry and~~
2 ~~inspection of all workplaces subject to the Act,~~

3 ~~(4) contains satisfactory assurances that such~~
4 ~~agency or agencies have or will have the legal author-~~
5 ~~ity and qualified personnel necessary for the enforce-~~
6 ~~ment of such standards,~~

7 ~~(5) gives satisfactory assurances that such State will~~
8 ~~devote adequate funds to the administration and enforce-~~
9 ~~ment of such standards, and~~

10 ~~(6) provides that the State agency will make such~~
11 ~~reports to the Secretary in such form and containing~~
12 ~~such information, as the Secretary shall from time to~~
13 ~~time require.~~

14 ~~(e) If the Secretary rejects a plan submitted under~~
15 ~~subsection (d), he shall afford the State submitting the plan,~~
16 ~~due notice and opportunity for a hearing.~~

17 ~~(f) After the Secretary approves a State plan submitted~~
18 ~~under subsection (b), he may, but shall not be required to,~~
19 ~~exercise his authority under sections 5, 6, 7, and 9, with~~
20 ~~respect to comparable standards promulgated under section 3,~~
21 ~~for the period specified in the next sentence. The Secretary~~
22 ~~may exercise the authority referred to above until he deter-~~
23 ~~mines, on the basis of actual operations under the State plan,~~
24 ~~that it meets the criteria set forth in subsection (d), but he~~
25 ~~shall not make such determination for at least one year after~~

1 the plan's approval under subsection (d). Upon making
2 the determination referred to in the preceding sentence, the
3 provisions of sections 5, 6, 7, and 9, and standards promul-
4 gated under section 3 of this Act, shall not apply with
5 respect to any occupational safety or health issues covered
6 under the plan.

7 (g) The Secretary shall, on the basis of reports sub-
8 mitted by the State agency and his own inspection, make a
9 continuing evaluation of the manner in which each State
10 having a plan approved under this section is carrying out
11 such plan. Whenever the Secretary finds, after affording due
12 notice and opportunity for a hearing, that in the administra-
13 tion of the State plan there is a failure to comply substantially
14 with any provision of the State plan (or any assurance
15 contained therein), he shall notify the State agency of his
16 withdrawal of approval of such plan and upon receipt of such
17 notice such plan shall cease to be in effect.

18 RELATIONSHIP TO OTHER FEDERAL PROGRAMS

19 **SEC. 13.** When the Secretary promulgates a set of occu-
20 pational safety and health standards applicable to an industry
21 and he determines (and so certifies) that such standards will
22 be substantially as effective in providing safe and healthful
23 employment and places of employment as other safety and
24 health standards applicable to such industry which were
25 promulgated under authority of other Federal laws, then such

1 ~~other standards shall be deemed repealed and rescinded on~~
2 ~~the effective date of the standards promulgated under this~~
3 ~~Act, except that proceedings already begun may be carried~~
4 ~~on to completion.~~

5 ~~FEDERAL AGENCY SAFETY PROGRAMS AND~~
6 ~~RESPONSIBILITIES~~

7 ~~Sec. 14. (a) It shall be the responsibility of the head~~
8 ~~of each Federal agency to establish and maintain an effective~~
9 ~~and comprehensive occupational safety and health program~~
10 ~~which is consistent with the standards promulgated by the~~
11 ~~Secretary under section 3. The head of each agency shall~~
12 ~~(after consultation with representatives of the employees~~
13 ~~thereof)—~~

14 ~~(1) provide safe and healthful places and condi-~~
15 ~~tions of employment, consistent with the standards set~~
16 ~~under section 3;~~

17 ~~(2) acquire, maintain, and require the use of safety~~
18 ~~equipment, personal protective equipment, and devices~~
19 ~~reasonably necessary to protect employees;~~

20 ~~(3) keep adequate records of all occupational acci-~~
21 ~~dents and illnesses for proper evaluation and necessary~~
22 ~~corrective action; and~~

23 ~~(4) make an annual report to the President with~~
24 ~~respect to occupational accidents and injuries and the~~
25 ~~agency's program under this section. Such report shall~~

1 ~~include any report submitted under section 7902 (c) (2)~~
2 ~~of title 5, United States Code.~~

3 ~~(b) The President shall transmit annually to the Senate~~
4 ~~and House of Representatives a report of the activities of~~
5 ~~each Federal agency under this section.~~

6 ~~RESEARCH AND RELATED ACTIVITIES~~

7 ~~SEC. 15. (a) (1) The Secretary of Health, Education,~~
8 ~~and Welfare, after consultation with the Secretary and with~~
9 ~~other appropriate Federal departments or agencies, shall~~
10 ~~conduct (directly or by grant or contract) research, experi-~~
11 ~~ments, and demonstrations relating to occupational safety~~
12 ~~and health.~~

13 ~~(2) The Secretary of Health, Education, and Welfare~~
14 ~~shall from time to time consult with the Secretary in order~~
15 ~~to develop specific plans for such research, demonstrations,~~
16 ~~and experiments as are necessary to produce criteria enabling~~
17 ~~the Secretary to meet his responsibility for the formulation~~
18 ~~of safety and health standards under this Act; and the Sec-~~
19 ~~retary of Health, Education, and Welfare, on the basis of~~
20 ~~such research, demonstrations, and experiments and any~~
21 ~~other information available to him, shall develop such~~
22 ~~criteria.~~

23 ~~(b) The Secretary of Health, Education, and Welfare~~
24 ~~is authorized to make inspections as provided in section 5~~

1 ~~of this Act in order to carry out his functions and responsi-~~
2 ~~bilities under this section.~~

3 ~~(c) The Secretary of Labor is authorized to enter into~~
4 ~~contracts, agreements, or other arrangements with appropri-~~
5 ~~ate public agencies or private organizations for the purpose~~
6 ~~of conducting studies related to his responsibilities for estab-~~
7 ~~lishing and applying occupational safety and health standards~~
8 ~~under section 3 of this Act. In carrying out his responsibili-~~
9 ~~ties under this subsection, the Secretary shall consult with the~~
10 ~~Secretary of Health, Education, and Welfare in order to~~
11 ~~avoid any duplication of efforts under this section.~~

12 ~~(d) The Secretary, after consultation with the Secretary~~
13 ~~of Health, Education, and Welfare, and with the appropriate~~
14 ~~official in each State as duly designated by such State, shall~~
15 ~~establish such accident and health reporting systems for~~
16 ~~employers and for the States as he deems necessary to~~
17 ~~carry out his responsibilities under this Act.~~

18 ~~TRAINING AND EMPLOYEE EDUCATION~~

19 ~~SEC. 16. (a) The Secretary of Health, Education, and~~
20 ~~Welfare, after consultation with the Secretary of Labor and~~
21 ~~with other appropriate Federal departments and agencies,~~
22 ~~shall conduct, directly or by grants or contracts (1) educa-~~
23 ~~tion programs to provide an adequate supply of qualified~~
24 ~~personnel to carry out the purposes of this Act, and (2) in-~~

1 ~~formational programs on the importance of and proper use of~~
2 ~~adequate safety equipment.~~

3 (b) ~~The Secretary is also authorized to conduct (directly~~
4 ~~or by grants or contracts) short-term training of personnel~~
5 ~~engaged in work related to his responsibilities under this Act.~~

6 (c) ~~The Secretary, in consultation with the Secretary~~
7 ~~of Health, Education, and Welfare, shall provide for the~~
8 ~~establishment and supervision of programs for the education~~
9 ~~and training of employers and employees in the recognition,~~
10 ~~avoidance, and prevention of unsafe or unhealthful working~~
11 ~~conditions in employments covered by this Act, and to con-~~
12 ~~sult with and advise employers as to effective means of pre-~~
13 ~~venting occupational injuries and illnesses.~~

14 ~~GRANTS TO THE STATES~~

15 ~~SEC. 17. (a) The Secretary is authorized, during the~~
16 ~~fiscal year ending June 30, 1969, and the two succeeding~~
17 ~~fiscal years, to make grants to the States to assist them (1)~~
18 ~~in identifying their needs and responsibilities in the area of~~
19 ~~occupational safety and health, (2) in developing State~~
20 ~~plans under section 12, or (3) in developing plans for—~~

21 (A) ~~establishing systems for the collection of in-~~
22 ~~formation concerning the nature and frequency of occu-~~
23 ~~pational injuries and diseases;~~

24 (B) ~~increasing the expertise and enforcement capa-~~

1 ~~bilities of their personnel engaged in occupational safety-~~
2 ~~and health programs; or~~

3 ~~(C) otherwise improving the administration and~~
4 ~~enforcement of State occupational safety and health~~
5 ~~laws, including standards thereunder, consistent with the~~
6 ~~objectives of this Act.~~

7 ~~(b) The Secretary is authorized, during the fiscal year~~
8 ~~ending June 30, 1969, and the two succeeding fiscal years, to~~
9 ~~make grants to the States for experimental and demonstration~~
10 ~~projects consistent with the objectives set forth in subsection~~
11 ~~(a) of this section.~~

12 ~~(c) The Governor of the State shall designate the ap-~~
13 ~~propriate State agency, or agencies, for receipt of any grant~~
14 ~~made by the Secretary under this section.~~

15 ~~(d) Any State agency, or agencies, designated by the~~
16 ~~Governor of the State, desiring a grant under this section~~
17 ~~shall submit an application therefor to the Secretary.~~

18 ~~(e) The Secretary shall review the application, and~~
19 ~~shall, after consultation with the Secretary of Health, Edu-~~
20 ~~cation, and Welfare, approve or reject such application.~~

21 ~~(f) The Federal share for each State grant under sub-~~
22 ~~section (a) or (b) of this section may be up to 90 per-~~
23 ~~centum of the State's total cost.~~

24 ~~(g) The Secretary is authorized to make grants to the~~
25 ~~States to assist them in administering and enforcing pro-~~

1 ~~grants for occupational safety and health contained in State~~
2 ~~plans approved by the Secretary pursuant to section 12 of~~
3 ~~this Act. The Federal share for each State grant under this~~
4 ~~subsection may be up to 50 per centum of the State's total~~
5 ~~cost.~~

6 ~~(h) Prior to June 30, 1971, the Secretary shall, after~~
7 ~~consultation with the Secretary of Health, Education, and~~
8 ~~Welfare, transmit a report to the President and to Congress~~
9 ~~describing the experience under the program and making any~~
10 ~~recommendations as he may deem appropriate.~~

11 ~~EFFECT ON OTHER LAWS~~

12 ~~SEC. 18. Nothing in this Act shall be construed or held to~~
13 ~~supersede or in any manner affect any workmen's com-~~
14 ~~pensation law or to enlarge or diminish or affect in any other~~
15 ~~manner the common law or statutory rights, duties, or liabili-~~
16 ~~ties of employers and employees under any law with re-~~
17 ~~spect to injuries, occupational or other diseases, or death~~
18 ~~of employees arising out of, or in the course of employment.~~

19 ~~AMOUNTS~~

20 ~~SEC. 19. (a) Each recipient of a grant under this Act~~
21 ~~shall keep such records as the Secretary shall prescribe, in-~~
22 ~~cluding records which fully disclose the amount and disposi-~~
23 ~~tion by such recipient of the proceeds of such grant, the~~
24 ~~total cost of the project or undertaking in connection with~~
25 ~~which such grant is made or used, and the amount of that~~

1 ~~portion of the cost of the project or undertaking supplied~~
2 ~~by other sources, and such other records as will facilitate an~~
3 ~~effective audit.~~

4 ~~(b) The Secretary and the Comptroller General of the~~
5 ~~United States, or any of their duly authorized representa-~~
6 ~~tives, shall have access for the purpose of audit and examina-~~
7 ~~tion to any books, documents, papers, and records of the~~
8 ~~recipients of any grant under this Act that are pertinent to~~
9 ~~any such grant.~~

10 REPORTS

11 ~~SEC. 20. Within one hundred and twenty days following~~
12 ~~the convening of the first session of each Congress, the Sec-~~
13 ~~retary and the Secretary of Health, Education, and Welfare~~
14 ~~shall jointly prepare and submit to the President for trans-~~
15 ~~mittal to the Congress a biennial report upon the subject~~
16 ~~matter of this Act, the progress concerning the achievement~~
17 ~~of its purposes, the needs and requirements in the field of~~
18 ~~occupational safety and health, and any other relevant infor-~~
19 ~~mation, and including any recommendations they may deem~~
20 ~~appropriate.~~

21 APPROPRIATIONS

22 ~~SEC. 21. There are authorized to be appropriated to~~
23 ~~carry out this Act not to exceed \$20,000,000 for the fiscal~~
24 ~~year ending June 30, 1969, not to exceed \$50,000,000 for~~

1 the fiscal year ending June 30, 1970, and for each subse-
2 quent fiscal year such sums as the Congress shall deem
3 necessary.

4 DEFINITIONS

5 Sec. 22. For the purposes of this Act:

6 (a) The term "Secretary" means the Secretary of
7 Labor or his duly authorized representative.

8 (b) The term "commerce" means trade, traffic,
9 commerce, transportation, or communication among the
10 several States; or between a State and any place outside
11 thereof; or within the District of Columbia, or a posses-
12 sion of the United States, or between points in the same
13 State but through a point outside thereof.

14 (c) The term "person" means one or more individ-
15 uals, partnerships, associations, corporations, business
16 trusts, legal representatives, or any organized groups of
17 persons.

18 (d) The term "employer" means a person engaged
19 in a business affecting commerce who has employees, but
20 does not include the United States or any State or polit-
21 ical subdivision of a State.

22 (e) The term "State" includes a State of the
23 United States, the District of Columbia, Puerto Rico,
24 the Virgin Islands, Guam, and American Samoa.

SEPARABILITY

SEC. 23. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. That this Act may be cited as the "Occupational Safety and Health Act of 1970".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that personal injuries and illnesses arising out of work situations which result in death or disability impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of reduced production, wage losses, medical expenses, and disability compensation payments.

(b) The Congress declares that it is the policy of the United States in the exercise of its powers to regulate commerce and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions—

(1) by providing for the development, promulgation, and effective enforcement of occupational safety and health standards applicable to businesses affecting commerce;

(2) by providing for research relating to occupational safety and health;

(3) by providing for training programs to increase and improve the skills of personnel engaged in the field of occupational safety and health;

(4) by more clearly delineating the responsibilities of the Federal Government and the States in their activities related to occupational safety and health;

(5) by providing grants to the States to assist them in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, and to conduct experimental and demonstration projects in connection therewith; and

(6) by providing for appropriate accident and health reporting procedures which will more accurately describe the nature of the problems in the field of occupational safety and health and achieve the objectives of this Act.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(a) The term "Secretary" means the Secretary of Labor or his authorized representative.

(b) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several

1 *States; or between a State and any place outside thereof; or*
2 *within the District of Columbia, or a possession of the United*
3 *States; or between points in the same State but through a*
4 *point outside thereof.*

5 (c) *The term "person" means one or more individuals,*
6 *partnerships, associations, corporations, business trusts, legal*
7 *representatives, or any organized group of persons.*

8 (d) *The term "employer" means a person engaged in*
9 *a business affecting commerce who has employees, but does*
10 *not include the United States or any State or political sub-*
11 *division of a State.*

12 (e) *The term "employee" means an employee of an*
13 *employer who is employed in a business of his employer*
14 *which affects commerce.*

15 (f) *The term "occupational safety and health stand-*
16 *ard" means a standard which requires conditions, or the*
17 *adoption or use of one or more practices, means, methods,*
18 *operations, or processes, reasonably necessary or appropriate*
19 *to provide safe or healthful employment and places of employ-*
20 *ment.*

21 (g) *The term "national consensus standard" means any*
22 *occupational safety and health standard or modification*
23 *thereof which (1) has been adopted and promulgated by a*
24 *nationally recognized standards-producing organization un-*
25 *der procedures whereby it can be determined by the Secre-*

1 tary that persons interested and affected by the scope or pro-
2 visions of the standard have reached substantial agreement
3 on its adoption, (2) was formulated in a manner which
4 afforded an opportunity for diverse views to be considered
5 and (3) has been designated as such a standard by the Sec-
6 retary, after consultation with other appropriate Federal
7 agencies.

8 (h) The term "established Federal standard" means
9 any operative occupational safety and health standard estab-
10 lished by any agency of the United States and presently
11 in effect, or contained in any Act of Congress in force on the
12 date of enactment of this Act.

13 **APPLICABILITY OF THIS ACT**

14 SEC. 4. (a) This Act shall apply with respect to em-
15 ployment performed in a workplace in a State, the District
16 of Columbia, the Commonwealth of Puerto Rico, the Virgin
17 Islands, American Samoa, the Trust Territory of the Pacific
18 Islands, Wake Island, Outer Continental Shelf lands defined
19 in the Outer Continental Shelf Lands Act, Johnston Island,
20 and the Canal Zone. The Secretary of the Interior shall, by
21 regulation, provide for judicial enforcement of this Act by
22 the courts established for areas in which there are no Federal
23 district courts having jurisdiction.

24 (b) (1) Except as provided in paragraph (2) of this
25 subsection, nothing in this Act shall be deemed to repeal or

1 *modify any other Federal law prescribing safety or health*
2 *requirements or the standards, rules, or regulations promul-*
3 *gated pursuant to such law, nor shall this Act apply to*
4 *working conditions of employees with respect to which any*
5 *Federal agency other than the Secretary of Labor exercises*
6 *statutory authority to prescribe or enforce standards or regu-*
7 *lations affecting occupational safety and health.*

8 (2) *The safety and health standards promulgated under*
9 *the Act of June 30, 1936, commonly known as the Walsh-*
10 *Healey Act (41 U.S.C. 35 et seq.), the Service Contract*
11 *Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54,*
12 *Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-*
13 *742, Act of August 23, 1958 (33 U.S.C. 941), and the*
14 *National Foundation on Arts and Humanities Act (20*
15 *U.S.C. 951 et seq.) are superseded on the effective date of*
16 *corresponding standards, promulgated under this Act, which*
17 *are determined by the Secretary to be more effective. Stand-*
18 *ards issued under the laws listed in this paragraph and in*
19 *effect on or after the effective date of this Act shall be deemed*
20 *to be occupational safety and health standards issued under*
21 *this Act.*

22 (3) *The Secretary shall, within three years after the*
23 *effective date of this Act, report to the Congress his recom-*
24 *mendations for legislation to avoid unnecessary duplication*

1 and to achieve coordination between this Act and other
2 Federal laws relating to occupational safety and health.

3 (4) Nothing in this Act shall be construed to super-
4 sede or in any manner affect any workmen's compensation
5 law or to enlarge or diminish or affect in any other manner
6 the common law or statutory rights, duties, or liabilities of
7 employers and employees under any law with respect to
8 injuries, diseases, or death of employees arising out of, or in
9 the course of, employment.

10 DUTIES OF EMPLOYERS AND EMPLOYEES

11 SEC. 5. (a) Each employer—

12 (1) shall furnish to each of his employees employ-
13 ment and a place of employment free from recognized
14 hazards so as to provide safe and healthful working
15 conditions, and

16 (2) shall, except as provided in section 16, comply
17 with occupational safety and health standards, and all
18 rules, regulations, and orders issued pursuant to this Act.

19 (b) Each employee shall, except as provided in section
20 16, comply with occupational safety and health standards
21 and all rules, regulations, and orders issued pursuant to this
22 Act which are applicable to his own actions and conduct.

23 OCCUPATIONAL SAFETY AND HEALTH STANDARDS

24 SEC. 6. (a) Without regard to chapter 5 of title 5,
25 United States Code, or to the other subsections of this

1 section, the Secretary shall, as soon as practicable dur-
2 ing the period beginning with the effective date of this
3 Act and ending two years after such date, by rule promulgate
4 as an occupational safety or health standard any national
5 consensus standard, and any established Federal standard,
6 unless he determines that the promulgation of such a standard
7 would not result in improved safety or health for specifically
8 designated employees. In the event of conflict among any
9 such standards, the Secretary shall promulgate the standard
10 which assures the greatest protection of the safety or health
11 of the affected employees. During such period he may also by
12 rule, and in accordance with section 553 of title 5, United
13 States Code, promulgate any standard adopted prior to the
14 date of enactment of this Act by a nationally recognized stand-
15 ards-producing organization by other than a consensus
16 method.

17 (b) The Secretary may by rule promulgate, modify, or
18 revoke any occupational safety or health standard in the
19 following manner:

20 (1) Whenever the Secretary, upon the basis of infor-
21 mation submitted to him in writing by an interested person,
22 a representative of any organization of employers or em-
23 ployees, a nationally recognized standards-producing organi-
24 zation, the Secretary of Health, Education, and Welfare, the
25 National Institute for Occupational Health and Safety, a

1 *State or political subdivision, or on the basis of information*
2 *developed by the Secretary or otherwise available to him,*
3 *determines that a rule should be promulgated in order to*
4 *serve the objectives of this Act, the Secretary may request*
5 *the recommendations of an advisory committee appointed un-*
6 *der section 7 of this Act. The Secretary shall provide such an*
7 *advisory committee with any proposals of his own or of the*
8 *Secretary of Health, Education, and Welfare, together with*
9 *all pertinent factual information developed by the Secretary*
10 *or the Secretary of Health, Education, and Welfare, or*
11 *otherwise available, including research, demonstrations, and*
12 *experiments. An advisory committee shall submit to the Sec-*
13 *retary its recommendations regarding the rule to be promul-*
14 *gated within ninety days from the date of its appointment or*
15 *within such longer or shorter period as may be prescribed by*
16 *the Secretary, but in no event for a period which is longer*
17 *than two hundred and seventy days.*

18 (2) *The Secretary shall publish a proposed rule pro-*
19 *mulgating, modifying, or revoking an occupational safety or*
20 *health standard in the Federal Register and shall afford in-*
21 *terested persons a period of thirty days after publication to*
22 *submit written data or comments. Where an advisory com-*
23 *mittee is appointed and the Secretary determines that a rule*
24 *should be issued, he shall publish the proposed rule within*
25 *sixty days after the submission of the advisory committee's*

1 *recommendations or the expiration of the period prescribed*
2 *by the Secretary for such submission.*

3 (3) *On or before the last day of the period provided for*
4 *the submission of written data or comments under paragraph*
5 *(2), any interested person may file with the Secretary*
6 *written objections to the proposed rule, stating the grounds*
7 *therefor and requesting a public hearing on such objections.*
8 *Within thirty days after the last day for filing such objec-*
9 *tions, the Secretary shall publish in the Federal Register a*
10 *notice specifying the occupational safety or health standard*
11 *to which objections have been filed and a hearing requested,*
12 *and specifying a time and place for such hearing.*

13 (4) *Within sixty days after the expiration of the period*
14 *provided for the submission of written data or comments un-*
15 *der paragraph (2), or within sixty days after the completion*
16 *of any hearing held under paragraph (3), the Secretary*
17 *shall issue a rule promulgating, modifying, or revoking an*
18 *occupational safety or health standard or make a determina-*
19 *tion that a rule should not be issued. Such a rule may contain*
20 *a provision delaying its effective date for such period as the*
21 *Secretary determines may be necessary to insure that affected*
22 *employers and employees will be informed of the existence*
23 *of the standard and of its terms and that employers affected*
24 *are given an opportunity to familiarize themselves and their*

1 *employees with the existence of the requirements of the*
2 *standard.*

3 (5) *The Secretary, in promulgating standards under*
4 *this subsection, shall set the standard which most adequately*
5 *and feasibly assures, on the basis of the best available evidence,*
6 *that no employee will suffer any impairment of health or*
7 *functional capacity, or diminished life expectancy even if*
8 *such employee has regular exposure to the hazard dealt with*
9 *by such standard for the period of his working life. Develop-*
10 *ment of such standards shall be based upon research, demon-*
11 *strations, experiments, and such other information as may be*
12 *appropriate. In addition to the attainment of the highest*
13 *degree of health and safety protection for the employee, other*
14 *considerations shall be the latest available scientific data in the*
15 *field, the feasibility of the standards, and experience gained*
16 *under this and other health and safety laws. Whenever*
17 *practicable, the standard promulgated shall be expressed in*
18 *terms of objective criteria and of the performance desired.*

19 (6) *Any standard promulgated under this subsection*
20 *shall prescribe the use of labels or other appropriate forms*
21 *of warning as are necessary to insure that employees are*
22 *apprised of all hazards to which they are exposed, rele-*
23 *vant symptoms and appropriate emergency treatment, and*
24 *proper conditions and precautions of safe use or exposure.*
25 *Where appropriate, such standard shall also prescribe suit-*

1 able protective equipment and control or technological pro-
2 cedures to be used in connection with such hazards and shall
3 provide for monitoring or measuring employee exposure
4 at such locations and intervals, and in such manner as may
5 be necessary for the protection of employees. In addition,
6 where appropriate, any such standard shall prescribe the
7 type and frequency of medical examinations or other tests
8 which shall be made available, by the employer or at his
9 cost, to employees exposed to such hazards in order to most
10 effectively determine whether the health of such employees
11 is adversely affected by such exposure. In the event such
12 medical examinations are in the nature of research, as
13 determined by the Secretary of Health, Education, and
14 Welfare, such examinations may be furnished at the expense of
15 the Secretary of Health, Education, and Welfare. The results
16 of such examinations or tests shall be furnished only to the
17 Secretary or the Secretary of Health, Education, and Wel-
18 fare, and, at the request of the employee, to his physician.
19 The Secretary, in consultation with the Secretary of Health,
20 Education, and Welfare may by rule promulgated pursuant
21 to section 553 of title 5, United States Code, make appro-
22 priate modifications in the foregoing requirements relating to
23 the use of labels or other forms of warning, monitoring or
24 measuring, and medical examinations, as may be warranted
25 by experience, information, or medical or technological devel-

1 *opments acquired subsequent to the promulgation of the rele-*
2 *vant standard.*

3 *(c)(1) The Secretary shall provide without regard to*
4 *the requirements of chapter 5, title 5, United States Code, for*
5 *an emergency temporary standard to take immediate effect*
6 *upon publication in the Federal Register if he determines*
7 *(A) that employees are exposed to grave danger from ex-*
8 *posure to substances or agents determined to be toxic or physi-*
9 *cally harmful or from new hazards, and (B) that such*
10 *emergency standard is necessary to protect employees from*
11 *such danger.*

12 *(2) Such standard shall be effective until superseded by*
13 *a standard promulgated in accordance with the procedures*
14 *prescribed in paragraph (3) of this subsection.*

15 *(3) Upon publication of such standard in the Federal*
16 *Register the Secretary shall commence a proceeding in ac-*
17 *cordance with section 6(b) of this Act, and the standard as*
18 *published shall also serve as a proposed rule for the proceed-*
19 *ing. The Secretary shall promulgate a standard under this*
20 *paragraph no later than six months after publication of the*
21 *emergency standard as provided in paragraph (2) of this*
22 *subsection.*

23 *(d) Any affected employer may apply to the Secretary*
24 *for a rule or order for a variance from a standard promul-*
25 *gated under this section. Affected employees shall be given*

1 notice of each such application and an opportunity to partici-
2 pate in a hearing. The Secretary shall issue such rule or
3 order if he determines on the record, after opportunity for
4 an inspection where appropriate and a hearing, that the
5 proponent of the variance has demonstrated by a preponder-
6 ance of the evidence that the conditions, practices, means,
7 methods, operations, or processes used or proposed to be used
8 by an employer will provide employment and places of em-
9 ployment to his employees which are as safe and healthful
10 as those which would prevail if he complied with the standard.
11 The rule or order so issued shall prescribe the conditions the
12 employer must maintain, and the practices, means, methods,
13 operations, and processes which he must adopt and utilize to
14 the extent they differ from the standard in question. Such a
15 rule or order may be modified or revoked upon application
16 by an employer, employees, or by the Secretary on his own
17 motion, in the manner prescribed for its issuance under this
18 subsection at any time after six months from its issuance.

19 (e) Whenever the Secretary promulgates any standard,
20 makes any rule, order or decision, grants any exemption or
21 extension of time, or compromises, mitigates, or settles any
22 penalty assessed under this Act, he shall include a statement
23 of the reasons for such action which shall be published in
24 the Federal Register.

25 (f) Any person who may be adversely affected by a

1 standard issued under this section may at any time prior
2 to the sixtieth day after such standard is promulgated file a
3 petition challenging the validity of such standard with the
4 United States court of appeals for the circuit wherein such
5 person resides or has his principal place of business, for a
6 judicial review of such standard. A copy of the petition
7 shall be forthwith transmitted by the clerk of the court to
8 the Secretary. The filing of such petition shall not, unless other-
9 wise ordered by the court, operate as a stay of the standard.

10 ADMINISTRATION: ADVISORY COMMITTEES

11 SEC. 7. (a) In carrying out his responsibilities under
12 this Act, the Secretary is authorized to—

13 (1) use, with the consent of any Federal agency,
14 the services, facilities, and personnel of such agency,
15 with or without reimbursement, and with the consent of
16 any State or political subdivision thereof, accept and
17 use the services, facilities, and personnel of any agency
18 of such State or subdivision with reimbursement; and

19 (2) employ experts and consultants or organiza-
20 tions thereof as authorized by section 3109 of title 5,
21 United States Code, except that contracts for such
22 employment may be renewed annually.

23 (b) The Secretary may appoint advisory committees to
24 recommend occupational safety and health standards under
25 section 6(b) of this Act. Each such advisory committee shall

1 consist of not more than fifteen members and shall include
2 as a member one or more designees of the Secretary of
3 Health, Education, and Welfare and may include among
4 its members an equal number of persons qualified by experi-
5 ence and affiliation to present the viewpoint of the employers
6 involved, and of persons similarly qualified to present the
7 viewpoint of the workers involved, as well as one or more
8 representatives of health and safety agencies of the States,
9 and such other persons who are qualified by knowledge
10 and experience to make a useful contribution to the work of
11 the committee, including one or more representatives of pro-
12 fessional organizations of technicians or professionals special-
13 izing in occupational safety or health, and one or more repre-
14 sentatives of nationally recognized standards producing or-
15 ganizations, but the number of persons so appointed to any
16 advisory committee shall not exceed the number appointed
17 to such committee as representatives of Federal and State
18 agencies. Persons appointed to advisory committees from
19 private life shall be compensated at a rate prescribed by
20 the Secretary not in excess of the daily rate prescribed for
21 GS-18 under section 5332 of title 5, United States Code. All
22 members of advisory committees shall be reimbursed for
23 travel, subsistence, and necessary expenses incurred in the
24 performance of their duties. The Secretary shall pay to any
25 State which is the employer of a member of the committee

1 who is a representative of the health or safety agency of that
2 State, a reimbursement sufficient to cover the actual cost to
3 the State resulting from the service of such representative
4 on the committee. No member of the committee (other than
5 representatives of employers and employees) shall have an
6 economic interest in any proposed rule.

7 (c)(1) The Secretary and the Secretary of Health,
8 Education, and Welfare shall appoint a National Advisory
9 Committee on Occupational Safety and Health (hereafter in
10 this subsection referred to as the "Committee"). The Com-
11 mittee shall consist of twenty members appointed without
12 regard to the provisions of title 5, United States Code, gov-
13 erning appointments in the competitive service and composed
14 equally of representatives of management, labor, occupational
15 safety and occupational health professions, and of the public.
16 The Secretary shall appoint all members of the Committee
17 except for occupational health representatives who shall be
18 appointed by the Secretary of Health, Education, and Wel-
19 fare. The Secretary shall designate one of the public members
20 as Chairman. The members shall be selected upon the basis of
21 their experience and competence in the field of occupational
22 safety and health.

23 (2) The Committee shall advise, consult with, and make
24 recommendations to, the Secretaries of Labor and Health,
25 Education, and Welfare on matters relating to the imple-

1 mentation of this Act. The Committee shall hold no fewer
2 than two meetings during each calendar year. All meetings
3 of the Committee shall be open to the public and a transcript
4 shall be kept and made available for public inspection.

5 (3) The members of the Committee appointed from pri-
6 vate life shall be compensated at a rate prescribed by the
7 Secretary not in excess of the daily rate prescribed for GS-18
8 under section 5332 of title 5, United States Code. All mem-
9 bers of the Committee shall be reimbursed for travel, subsist-
10 ence, and necessary expenses in the performance of their
11 duties.

12 (4) The Secretary shall furnish to the Committee an
13 executive secretary and such secretarial, clerical, and other
14 services as are deemed necessary to the conduct of its
15 business.

16 INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

17 SEC. 8. (a) In order to carry out the purposes of this
18 Act, the Secretary, or any authorized representative, upon
19 presenting appropriate credentials to the owner, operator,
20 or agent in charge, is authorized—

21 (1) to enter upon at reasonable times any place of
22 employment where work is performed to which this Act
23 applies; and

24 (2) to inspect and investigate during regular work-
25 ing hours and at other reasonable times, and within

1 *reasonable limits and in a reasonable manner, any such*
2 *place of employment and all pertinent conditions, struc-*
3 *tures, machines, apparatus, devices, equipment, and mate-*
4 *rials therein, and to question privately any such em-*
5 *ployer, owner, operator, agent or employee.*

6 *(b) For the purposes of any investigation or proceed-*
7 *ing provided for in this Act, the provisions of sections 9 and*
8 *10 (relating to the attendance of witnesses and the produc-*
9 *tion of books, papers, and documents) of the Federal Trade*
10 *Commission Act of September 16, 1914 (15 U.S.C. 49, 50),*
11 *are hereby made applicable to the jurisdiction, powers, and*
12 *duties of the Secretary or any officers designated by him.*

13 *(c)(1) Each employer shall make, keep and preserve,*
14 *and make available to the Secretary or the Secretary of*
15 *Health, Education, and Welfare, such records regarding his*
16 *activities relating to this Act as the Secretary, in cooperation*
17 *with the Secretary of Health, Education, and Welfare, may*
18 *prescribe by regulation as necessary or appropriate for the*
19 *enforcement of this Act or for developing information re-*
20 *garding the causes and prevention of occupational accidents*
21 *and illnesses. Such regulations may include provisions re-*
22 *quiring employers to conduct periodic inspections to deter-*
23 *mine their own state of compliance with this Act or with*
24 *applicable standards, regulations, and orders, and to certify*
25 *the results of such inspections to the Secretary. The Secre-*

1 tary shall also issue regulations requiring that employers,
2 through posting of notices or other appropriate means, keep
3 their employees informed of their protections and obliga-
4 tions under this Act, including the provisions of applicable
5 standards.

6 (2) The Secretary, in cooperation with the Secretary of
7 Health, Education, and Welfare, shall prescribe regulations
8 requiring employers to maintain accurate records of, and to
9 make periodic reports on, all work-related deaths, injuries and
10 illnesses. The Secretary shall compile accurate statistics on
11 work injuries and illnesses which shall include all disabling,
12 serious, or significant injuries and illnesses, whether or not
13 involving loss of time from work.

14 (3) The Secretary, in cooperation with the Secretary
15 of Health, Education, and Welfare shall issue regulations re-
16 quiring employers to maintain accurate records of employee
17 exposures to potentially toxic materials or harmful physical
18 agents which are required to be monitored or measured
19 under section 6 or 18. Such regulations shall provide em-
20 ployees or their representatives with an opportunity to
21 observe such monitoring or measuring, and to have access
22 to the records thereof. Such regulations shall also make
23 appropriate provision for each employee or former employee
24 to have access to such records as will indicate his own ex-
25 posure to potentially toxic materials or harmful physical

1 agents. Each employer shall promptly notify any employee
2 who has been or is being exposed to toxic materials or harm-
3 ful physical agents in concentrations or at levels which ex-
4 ceed those prescribed by an applicable occupational safety
5 and health standard promulgated under section 6, and shall
6 inform any employee who is being thus exposed of the correc-
7 tive action being taken.

8 (d) Any information required by the Secretary or
9 the Secretary of Health, Education, and Welfare, under
10 this Act shall be obtained with a minimum burden upon
11 employers, especially those operating small businesses. To
12 the maximum extent possible, unnecessary duplication of
13 efforts by employers in recording or reporting information
14 shall be reduced.

15 (e) Subject to regulations issued by the Secretary, a
16 representative of the employer and a representative author-
17 ized by his employees shall be given an opportunity to
18 accompany the Secretary or his authorized representative
19 during the physical inspection of any workplace under sub-
20 section (a) for the purpose of aiding such inspection. Where
21 there is no authorized employee representative the Secretary
22 or his authorized representative shall consult with a reason-
23 able number of employees concerning matters of health and
24 safety in the workplace.

25 (1)(1) Any employees or representative of employees

1 who believe that a violation of a safety or health standard
2 exists that threatens physical harm, or that an imminent
3 danger exists, my request an inspection by giving notice to the
4 Secretary or his authorized representative of such violation
5 or danger. Any such notice shall be reduced to writing, shall
6 set forth with reasonable particularity the grounds for the
7 notice, and shall be signed by the employees or representative
8 of employees, except that, upon the request of the person
9 giving such notice, his name and the names of individual
10 employees referred to therein shall not appear on any record
11 published, released, or made available pursuant to subsection
12 (g) of this section. If upon receipt of such notification the
13 Secretary determines there are reasonable grounds to believe
14 that such violation or danger exists, he shall make a special
15 inspection in accordance with the provisions of this section as
16 soon as practicable, to determine if such violations or danger
17 exist. If the Secretary determines there are no reasonable
18 grounds to believe that a violation or danger exists he shall
19 notify in writing the employees or representative of the em-
20 ployees of such determination.

21 (2) Prior to or during any inspection of a workplace,
22 any employees or representative of employees employed in
23 such workplace may notify the Secretary or any representa-
24 tive of the Secretary responsible for conducting the inspection,
25 in writing, of any violation of this Act which they have

1 *reason to believe exists in such workplace. The Secretary*
2 *shall, after the completion of the inspection, furnish any such*
3 *employees or representative with a written explanation of*
4 *any failure to issue a citation with respect to any such*
5 *alleged violation. The Secretary shall also, by regulation,*
6 *establish procedures for informal review of any refusal by*
7 *a representative of the Secretary to issue a citation with*
8 *respect to any such violation and shall furnish the employees*
9 *or representative of employees requesting such review a writ-*
10 *ten statement of the reasons for the Secretary's final disposi-*
11 *tion of the case.*

12 *(g) The Secretary or Secretary of Health, Education,*
13 *and Welfare is authorized to compile, analyze, and publish,*
14 *either in summary or detailed form, all reports or information*
15 *obtained under this section.*

16 CITATIONS FOR VIOLATIONS

17 *SEC. 9. (a) If, upon inspection or investigation, the*
18 *Secretary or his authorized representative determines that*
19 *an employer has violated a requirement of sections 5, 6(d),*
20 *8(c), 18, or a rule, regulation, or order prescribed pursuant*
21 *to one of those sections, he shall issue forthwith a citation to*
22 *the employer. Each citation shall be in writing, and shall*
23 *describe with particularity the nature of the violation, includ-*
24 *ing a reference to the provision of the Act, rule, regulation, or*
25 *order alleged to have been violated. In addition, the citation*

1 shall fix a reasonable time for the abatement of the violation.
2 The Secretary may prescribe procedures for the issuance of a
3 notice in lieu of a citation with respect to de minimus viola-
4 tions which have no direct or immediate relationship to safety
5 or health.

6 (b) Each citation issued under this section, or a copy
7 or copies thereof, shall be prominently posted, as prescribed
8 in regulations issued by the Secretary, at or near each place
9 a violation referred to in the citation occurred.

10 **PROCEDURES FOR ENFORCEMENT**

11 **SEC. 10.** (a) If, after an inspection or investigation,
12 the Secretary issues a citation under section 9(a), he
13 shall, within a reasonable time after the termination of such
14 inspection or investigation, notify the employer by certified
15 mail of the penalty, if any, proposed to be assessed under
16 section 14 and that the employer has fifteen working days
17 within which to notify the Secretary that he wishes to con-
18 test the citation or proposed assessment of penalty. If, with-
19 in fifteen working days from the receipt of the notice issued
20 by the Secretary the employer fails to notify the Secretary
21 that he intends to contest the citation or proposed assess-
22 ment of penalty, and no notice is filed by an employee or
23 representative of employees under subsection (c), the cita-
24 tion and the assessment, as proposed, shall be final as to the
25 employer and not subject to review by any court or agency,

1 and for purposes of subsection (e) shall be deemed a final
2 order issued by the Secretary under subsection (c).

3 (b) If the Secretary has reason to believe that an em-
4 ployer has failed to correct a violation for which a citation
5 has been issued within the period permitted for its correction
6 (which period shall not begin to run until the termination
7 of any review proceedings under this section initiated by the
8 employer in good faith and not solely for delay or avoidance
9 of penalties), or has failed to comply with an order issued
10 under section 11(b), the Secretary shall notify the employer
11 by certified mail of such failure and of the penalty proposed
12 to be assessed under section 14 by reason of such failure, and
13 that the employer has fifteen working days within which to
14 notify the Secretary that he wishes to contest the Secretary's
15 notification or the proposed assessment of penalty. If, within
16 fifteen working days from the receipt of the notification is-
17 sued by the Secretary, the employer fails to notify the Secre-
18 tary that he intends to contest the notification or proposed
19 assessment of penalty, the notification and assessment, as
20 proposed, shall be final and not subject to review by any
21 court or agency, and for purposes of subsection (e) shall
22 be deemed a final order issued by the Secretary under sub-
23 section (c).

24 (c) If an employer notifies the Secretary that he intends
25 to contest a citation issued under section 9(a) or notifica-

1 tion issued under section 10(b), or a proposed assessment of
2 penalty issued under section 10 (a) or (b), or if, within
3 fifteen working days of the issuance of a citation under sec-
4 tion 9(a), any employee or representative of employees files
5 a notice with the Secretary alleging that he believes the
6 period of time fixed in the citation for the abatement of
7 the violation is unreasonable, the Secretary shall afford an
8 opportunity for a hearing (in accordance with section 554
9 of title 5, United States Code, but without regard to subsec-
10 tion (a)(3) of such section), and shall issue an order, based
11 on findings of fact, confirming, denying, or modifying the
12 citation or assessment of penalty, or, if he determines the
13 employer has failed to correct a violation within the period
14 fixed in the citation, shall issue such orders, based on findings
15 of fact, as may be necessary for the correction of the violation
16 for which the citation was issued, and for the assessment and
17 collection of any penalty under section 14. The Secretary
18 shall give the employer, or any other person who has filed a
19 notice under this subsection, the information required by
20 section 554(b) of title 5, United States Code, at least fifteen
21 days prior to the hearing. Upon a showing by an employer
22 of a good faith effort to comply with the abatement require-
23 ments of a citation, and that abatement has not been completed
24 because of factors beyond his reasonable control, the Secre-
25 tary, after an opportunity for a hearing as provided in this

1 subsection, shall issue an order affirming or modifying the
2 abatement requirements in such citation. The rules of proce-
3 dures prescribed by the Secretary shall provide affected em-
4 ployees or representatives of affected employees an opportu-
5 nity to participate as parties to hearings under this subsection.

6 (d) Except in the case of an order which has become
7 final under section 10 (a) or (b), any person adversely
8 affected or aggrieved by a final order of the Secretary issued
9 under subsection (c) or subsection (f) may obtain a review
10 of such order in any United States court of appeals for the
11 circuit in which the violation is alleged to have occurred or
12 where the employer has its principal office, or in the Court of
13 Appeals for the District of Columbia Circuit, by filing in
14 such court within sixty days following the service of such
15 order a written petition to modify or set aside the order of the
16 Secretary. A copy of such petition shall be forthwith trans-
17 mitted by the clerk of the court to the Secretary and there-
18 upon the Secretary shall file in the court the record in the
19 proceeding as provided in section 2112 of title 28, United
20 States Code. Upon such filing, the court shall have jurisdic-
21 tion of the proceeding and of the question determined therein,
22 and shall have power to grant to the petitioner or the Secre-
23 tary such temporary relief or restraining order as it deems
24 just and proper, and to make and enter upon the pleadings,
25 testimony, and proceedings set forth in such record a decree

1 affirming, modifying, or setting aside in whole or in part, the
2 order of the Secretary and enforcing the same to the extent
3 that such order is affirmed or modified. The commencement
4 of proceedings under this subsection shall not, unless ordered
5 by the court, operate as a stay of the order of the Secretary.
6 No objection that has not been urged before the Secretary
7 shall be considered by the court, unless the failure or neglect
8 to urge such objection shall be excused because of extraordi-
9 nary circumstances. The findings of the Secretary with re-
10 spect to questions of fact, if supported by substantial evidence
11 on the record considered as a whole, shall be conclusive. If
12 any party shall apply to the court for leave to adduce addi-
13 tional evidence and shall show to the satisfaction of the court
14 that such additional evidence is material and that there were
15 reasonable grounds for the failure to adduce such evidence in
16 the hearing before the Secretary, the court may order such
17 additional evidence to be taken before the Secretary and to be
18 made a part of the record. The Secretary may modify his
19 findings as to the facts, or make new findings, by reason of
20 additional evidence so taken and filed, and he shall file such
21 modified or new findings, which findings with respect to ques-
22 tions of fact, if supported by substantial evidence on the rec-
23 ord considered as a whole, shall be conclusive, and his recom-
24 mendations, if any, for the modification or setting aside of his
25 original order. Upon the filing of the record with it, the juris-

1 diction of the court shall be exclusive and its judgment and
2 decree shall be final, except that the same shall be subject to
3 review by the Supreme Court of the United States, as pro-
4 vided in section 1254 of title 28, United States Code. Peti-
5 tions filed under this subsection shall be heard expeditiously.

6 (e) The Secretary may petition any United States
7 court of appeals for the circuit in which the violation oc-
8 curred or where the employer has its principal office, for a
9 decree enforcing his order, and the provisions of subsection
10 (d) shall govern such proceedings to the extent applicable.

11 If no petition for review, as provided in subsection (d),
12 is filed within sixty days after service of the Secretary's
13 order, the Secretary's findings of fact and order shall be con-
14 clusive in connection with any petition for enforcement,
15 which is filed by the Secretary after the expiration of such
16 sixty-day period. In any such case, as well as in the case of a
17 noncontested citation or notification by the Secretary which
18 has become a final order of the Secretary under subsection (a)
19 or (b) of this section, the clerk of the court, unless otherwise
20 ordered by the court, shall forthwith enter a decree enforcing
21 the order of the Secretary and shall transmit a copy of such
22 decree to the Secretary and the employer named in the
23 petition. In any contempt proceeding brought to enforce a
24 decree of a court of appeals entered pursuant to this sub-
25 section or subsection (d), the court of appeals may impose

1 the penalties provided in section 14, in addition to invoking
2 any other available remedies.

3 (f) No person shall discharge or in any other way
4 discriminate against an employee because of the exercise by
5 such employee on behalf of himself or others of any right
6 afforded by this Act, including action to determine the ex-
7 tent of employee exposure to hazardous substances, or
8 for leaving a workplace upon the order of the Secretary
9 or a district court issued pursuant to section 11. Any
10 employee who believes that he has been discharged or
11 otherwise discriminated against by any person in violation
12 of this subsection may, within thirty days after such vio-
13 lation occurs, apply to the Secretary for a review of such
14 alleged discrimination. A copy of the application shall
15 be sent to such person who shall be the respondent. Upon
16 receipt of such application, the Secretary shall cause such
17 investigation to be made as he deems appropriate. Such in-
18 vestigation shall provide an opportunity for a public hearing
19 at the request of any party to enable the parties to present
20 information relating to such alleged violation. The parties
21 shall be given written notice of the time and place of the hear-
22 ing at least five days prior to the hearing. Any such hearing
23 shall be of record and shall be conducted in accordance with
24 section 554 of title 5, United States Code. Upon receiving the
25 report of such investigation the Secretary shall make findings

1 of fact. If he finds that such alleged violation did occur, he
2 shall issue a decision, incorporating an order therein, requir-
3 ing the person committing such violation to take such affirm-
4 ative action to abate the violation as the Secretary deems
5 appropriate, including, but not limited to, the rehiring
6 or reinstatement of the employee to his former position
7 with back pay. If he finds that there was no such violation
8 he shall issue an order denying the application, incorporating
9 his findings therein. Judicial review or enforcement of the
10 Secretary's order may be obtained in the manner provided
11 in subsection (d) or (e) of this section.

12 **PROCEDURES TO COUNTERACT IMMINENT DANGERS**

13 **SEC. 11.** (a) If, upon inspection or investigation of a
14 place of employment, the Secretary determines that an immi-
15 nent danger exists in such place of employment, the Secretary
16 may bring a civil action in the United States district court
17 for the district where the imminent danger exists or where the
18 employer has its principal office for a temporary restraining
19 order or injunction requiring such steps to be taken as may
20 be necessary to avoid, correct or remove such imminent
21 danger and prohibiting the employment or presence of any
22 individual in locations or under conditions where such im-
23 minent danger exists, except individuals whose presence is
24 necessary to avoid, correct, or remove such imminent danger
25 or to maintain the capacity of a continuous process operation

1 to restart without a complete cessation of operations, or where
2 a cessation of operations is necessary, to permit such to be
3 accomplished in a safe and orderly manner. An action may
4 be brought under this subsection while an order of the Sec-
5 retary under subsection (b) is in effect. As used in this
6 section the term "imminent danger" means a condition or
7 practice which could reasonably be expected to cause death
8 or serious physical harm before such condition or practice
9 can be abated.

10 (b) If the Secretary determines that the imminence
11 of a danger referred to in subsection (a) is such that
12 immediate action is necessary, and the Secretary determines
13 that there is not sufficient time, in light of the nature and im-
14 minence of the danger, to seek and obtain a temporary re-
15 straining order or injunction under subsection (a) of this
16 section, the Secretary shall issue an order requiring such steps
17 to be taken as may be necessary to avoid, correct, or remove
18 such imminent danger and prohibiting the employment or
19 presence of any individual in locations or under conditions
20 where such imminent danger exists, except individuals whose
21 presence is necessary to avoid, correct, or remove such immi-
22 nent danger, or to maintain the capacity of a continuous proc-
23 ess operation to restart without a complete cessation of opera-
24 tions, or where a cessation of operations is necessary, to
25 permit such to be accomplished in a safe and orderly manner.

1 *Such order may remain in effect for not more than seventy-*
2 *two hours from the time of its issuance. If the Secretary dele-*
3 *gates his authority to issue orders under this subsection, he*
4 *shall provide that such order may not be issued until the con-*
5 *currence of an appropriate regional Labor Department of-*
6 *ficial is first obtained. The Secretary shall by regulation pro-*
7 *vide appropriate procedures whereby an employer may obtain*
8 *expeditious informal reconsideration by officials of the De-*
9 *partment of Labor of any order issued under this subsection.*

10 *(c) If the Secretary arbitrarily or capriciously fails to*
11 *issue an order or seek relief under this section, any em-*
12 *ployee who may be injured by reason of such failure, or*
13 *the representative of such employees, may bring an action*
14 *against the Secretary in the United States district court for*
15 *the district in which the imminent danger is alleged to exist*
16 *or the employer has its principal office, or for the District*
17 *of Columbia, for a writ of mandamus to compel the Secre-*
18 *tary to issue such an order and for such further relief as*
19 *may be appropriate.*

20 **REPRESENTATION IN CIVIL LITIGATION**

21 *SEC. 12. Except as provided in section 518(a) of title*
22 *28, United States Code, relating to litigation before the*
23 *Supreme Court, the Solicitor of Labor may appear for and*
24 *represent the Secretary in any civil litigation brought under*

1 *this Act but all such litigation shall be subject to the direc-*
2 *tion and control of the Attorney General.*

3 *CONFIDENTIALITY OF TRADE SECRETS*

4 *SEC. 13. All information reported to or otherwise ob-*
5 *tained by the Secretary or his representative in connection*
6 *with any inspection or proceeding under this Act which con-*
7 *tains or which might reveal a trade secret referred to in sec-*
8 *tion 1905 of title 18 of the United States Code shall be con-*
9 *sidered confidential for the purpose of that section, except*
10 *that such information may be disclosed to other officers or*
11 *employees concerned with carrying out this Act or when*
12 *relevant in any proceeding under this Act. In any such*
13 *proceeding the Secretary or the court shall issue such orders*
14 *as may be appropriate to protect the confidentiality of trade*
15 *secrets.*

16 *PENALTIES*

17 *SEC. 14. (a) Any employer who violates any standard*
18 *promulgated under section 6, or the requirements of sec-*
19 *tions 6(d), 8(c), 18, or any rule, regulation, or order issued*
20 *pursuant to one of those sections, and who has received a*
21 *citation therefor, shall be assessed a civil penalty of not*
22 *more than \$1,000 for each such violation. Any employer*
23 *who fails to correct a violation for which a citation has*
24 *been issued under section 9(a) within the period permitted*
25 *for its correction (which period shall not begin to run until*

1 the termination of any review proceedings under section
2 10 initiated by the employer in good faith and not solely
3 for delay or avoidance of penalties), or who fails to comply
4 with an order issued under section 11(b), shall be assessed
5 a civil penalty of not more than \$1,000 for each day during
6 which such failure or violation continues.

7 (b) The Secretary may compromise, mitigate, or settle
8 any claim for civil penalties. In assessing the penalty con-
9 sideration shall be given to the appropriateness of such penalty
10 to the size of the business of the person charged, to the gravity
11 of the violation, to the history of previous violations, and to
12 the good faith of the employer.

13 (c) Any employer who willfully violates any standard
14 promulgated under section 6, or the requirements of sections
15 6(d), 8(c), 18, or of any rule, regulation or order issued
16 pursuant to one of those section, shall, upon conviction, be
17 punished by a fine of not more than \$10,000 or by imprison-
18 ment for not more than six months, or by both; except that if
19 the conviction is for a violation committed after a first convic-
20 tion of such person, punishment shall be by a fine of not more
21 than \$20,000 or by imprisonment for not more than one year,
22 or by both.

23 (d) Any person who gives advance notice of any in-
24 spection to be conducted under this Act, without authority
25 from the Secretary or his designees, shall, upon conviction,

1 be punished by a fine of not more than \$1,000 or by im-
2 prisonment for not more than six months, or by both.

3 (e) Whoever knowingly makes any false statement,
4 representation, or certification in any application, record,
5 report, plan, or other document filed or required to be
6 maintained pursuant to this Act shall, upon conviction, be
7 punished by a fine of not more than \$10,000, or by imprison-
8 ment for not more than six months, or by both.

9 (f) Section 1114 of title 18, United States Code, is
10 hereby amended by striking out "designated by the Secre-
11 tary of Health, Education, and Welfare to conduct investiga-
12 tions, or inspections under the Federal Food, Drug, and
13 Cosmetic Act" and inserting in lieu thereof "or of the De-
14 partment of Labor assigned to perform investigative, inspec-
15 tion, or law enforcement functions".

16 VARIATIONS, TOLERANCES, AND EXEMPTIONS

17 SEC. 15. The Secretary may establish such rules and
18 regulations allowing reasonable variations, tolerances, and
19 exemptions to and from any or all provisions of this Act
20 as he may find necessary and proper to avoid serious impair-
21 ment of the national defense. Action under this section shall
22 not be in effect for more than six months without notification
23 to affected employees and an opportunity being afforded for a
24 hearing.

STATE JURISDICTION AND STATE PLANS

SEC. 16. (a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

(b) Any State which, at any time, desires to assume responsibility for the development and enforcement in such State of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies to be responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are at least as effective in providing safe and healthful employment and places of

1 *employment as the standards promulgated under section*
2 *6 which relate to the same issues,*

3 *(3) provides for a right of entry and inspection of*
4 *all places of employment subject to the plan which is at*
5 *least as effective as that provided in section 8 (a), (c),*
6 *(d) and (e), and includes a prohibition on advance*
7 *notice of inspections,*

8 *(4) contains satisfactory assurances that such*
9 *agency or agencies will have the legal authority and*
10 *qualified personnel necessary for the enforcement of*
11 *such standards,*

12 *(5) gives satisfactory assurances that such State*
13 *will devote adequate funds to the administration and*
14 *enforcement of such standards,*

15 *(6) contains satisfactory assurances that such State*
16 *will, to the extent permitted by its law, establish and*
17 *maintain an effective and comprehensive occupational*
18 *safety and health program applicable to all employees*
19 *of public agencies of the State and its political subdivi-*
20 *sions over which it has jurisdiction, which program shall*
21 *be as effective as the standards contained in the approved*
22 *plan,*

23 *(7) requires employers in the State to make re-*
24 *ports to the Secretary in the same manner and to the*
25 *same extent as if the plan were not in effect, and*

1 (8) provides that the State agency will make such
2 reports to the Secretary in such form and containing
3 such information, as the Secretary shall from time to
4 time require.

5 (d) If the Secretary disapproves a plan submitted under
6 this section, he shall afford the State submitting the plan,
7 due notice and opportunity for a hearing.

8 (e) After the Secretary approves a State plan submitted
9 under subsection (b), he may, but shall not be required to,
10 exercise his authority under sections 8, 9, 10, and 14 with
11 respect to comparable standards promulgated under section
12 6, for the period specified in this subsection. The Secre-
13 tary may exercise the authority referred to above until he
14 determines, on the basis of actual operations under the State
15 plan, that the criteria set forth in subsection (c) are being
16 applied, but he shall not make such a determination for at
17 least three years after approval of the plan under subsection
18 (c). Upon making the determination referred to in the pre-
19 ceding sentence, the provisions of section 5 (a) (2) and (b),
20 8 (except for purpose of carrying out subsection (f) of this
21 section), 9, 10, and 14, and standards promulgated under
22 section 6 of this Act, shall not apply with respect to any
23 occupational safety or health issues covered under the plan,
24 but the Secretary may retain jurisdiction under the above

1 provisions in any proceeding commenced under section 9 or 10
2 before the date of a determination under this subsection.

3 (f) The Secretary shall, on the basis of reports sub-
4 mitted by the State agency and his own inspections make a
5 continuing evaluation of the manner in which each State
6 having a plan approved under this section is carrying out
7 such plan. Whenever the Secretary finds, after affording
8 due notice and opportunity for a hearing, that in the adminis-
9 tration of the State plan there is a failure to comply sub-
10 stantially with any provision of the State plan, he shall notify
11 the State agency of his withdrawal of approval of such plan
12 and upon receipt of such notice such plan shall cease to be
13 in effect, but the State may retain jurisdiction in any case
14 commenced before the withdrawal of the plan in order to
15 enforce standards under the plan whenever the issues in-
16 volved do not relate to the reasons for the withdrawal of
17 the plan.

18 (g) The State may obtain a review of a decision of the
19 Secretary withdrawing approval of or rejecting its plan by
20 the United States court of appeals for the circuit in which
21 the State is located by filing in such court within thirty days
22 following receipt of notice of such decision a petition to
23 modify or set aside in whole or in part the action of
24 the Secretary. A copy of such petition shall forthwith be
25 served upon the Secretary, and thereupon the Secretary

1 shall certify and file in the court the record upon which the
2 decision complained of was issued as provided in section
3 2112 of title 28, United States Code. Unless the court finds
4 that the Secretary's decision in rejecting a proposed State
5 plan or withdrawing his approval of such a plan to be arbitrary and capricious, the court shall affirm the Secretary's
6 decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title
7 28, United States Code.

11 **FEDERAL AGENCY SAFETY PROGRAMS AND**

12 **RESPONSIBILITIES**

13 *SEC. 17. (a) It shall be the responsibility of the head*
14 *of each Federal agency to establish and maintain an effective*
15 *and comprehensive occupational safety and health program*
16 *which is consistent with the standards promulgated under*
17 *section 6. The head of each agency shall, after consultation*
18 *with representatives of the employees thereof—*

19 *(1) provide safe and healthful places and condi-*
20 *tions of employment, consistent with the standards set*
21 *under section 6;*

22 *(2) acquire, maintain, and require the use of safety*
23 *equipment, personal protective equipment, and devices*
24 *reasonably necessary to protect employees;*

25 *(3) keep adequate records of all occupational acci-*

1 *dents and illnesses for proper evaluation and necessary*
2 *corrective action;*

3 *(4) consult with the Secretary with regard to the*
4 *adequacy as to form and content of records kept pur-*
5 *suant to paragraph (3); and*

6 *(5) make an annual report to the Secretary with*
7 *respect to occupational accidents and injuries and the*
8 *agency's program under this section. Such report shall*
9 *include any report submitted under section 7902(e) (2)*
10 *of title 5, United States Code.*

11 *(b) The Secretary shall prepare and submit to the Presi-*
12 *dent for transmittal to the Congress a summary or digest of*
13 *reports submitted to him under subsection (a) (4) of this*
14 *section, together with his evaluation of and recommendations*
15 *derived from such reports.*

16 *(c) Section 7902(c) (1) of title 5, United States Code,*
17 *is amended by inserting after "agencies" the following: "and*
18 *of labor organizations representing employees".*

19 *(d) The Secretary shall have access to records and*
20 *reports kept and filed by Federal agencies pursuant to sub-*
21 *sections (a) (3) and (5) of this section unless those records*
22 *and reports are specifically required by Executive order to*
23 *be kept secret in the interest of the national defense or foreign*
24 *policy, in which case the Secretary shall have access to such*

1 information as will not jeopardize national defense or foreign
2 policy.

3 RESEARCH, TRAINING, AND RELATED ACTIVITIES

4 SEC. 18. (a) (1) The Secretary of Health, Education,
5 and Welfare, after consultation with the Secretary and with
6 the heads of other appropriate Federal departments or agen-
7 cies, shall conduct, either directly or by way of grant or con-
8 tract, research, experiments, and demonstrations relating to
9 occupational safety and health, including studies of psycholog-
10 ical factors involved and the development of innovative meth-
11 ods, techniques, and approaches for dealing with existing or
12 anticipated occupational safety and health problems.

13 (2) The Secretary of Health, Education, and Welfare
14 shall be responsible for producing criteria upon which the
15 Secretary may formulate occupational safety and health
16 standards under this Act, and shall from time to time consult
17 with the Secretary in order to develop specific plans for such
18 research, demonstrations, and experiments as are necessary
19 to produce such criteria. The Secretary of Health, Education,
20 and Welfare, on the basis of such research, demonstrations,
21 and experiments and any other information available to him,
22 shall develop such criteria which if applied will assure that
23 no employee will suffer impaired health or functional capaci-
24 ties, or diminished life expectancy as a result of his work
25 experience.

1 (3) *The Secretary of Health, Education, and Welfare,*
2 *in order to comply with his responsibilities under paragraph*
3 *(2), and in order to develop needed information regarding*
4 *potentially toxic substances or harmful physical agents, may*
5 *prescribe regulations requiring employers to measure, record,*
6 *and make reports on the exposure of employees to sub-*
7 *stances or physical agents which the Secretary of Health,*
8 *Education, and Welfare reasonably believes may endanger*
9 *the health or safety of employees. The Secretary of Health,*
10 *Education, and Welfare also is authorized to establish*
11 *such programs of medical examinations and tests as may be*
12 *necessary for determining the incidence of occupational ill-*
13 *nesses and the susceptibility of employees to such ill-*
14 *nesses. Nothing in this or any other provision of this Act*
15 *shall be deemed to authorize or require medical exami-*
16 *nation, immunization, or treatment for those who object*
17 *thereto on religious grounds, except where such is neces-*
18 *sary for the protection of the health or safety of others.*
19 *Upon the request of any employer who is required to*
20 *measure and record exposure of employees to substances*
21 *or physical agents as provided under this subsection, the*
22 *Secretary of Health, Education, and Welfare shall furnish*
23 *full financial or other assistance to such employer for the*
24 *purpose of defraying any additional expense incurred by*

1 *him in carrying out the measuring and recording as pro-*
2 *vided in this subsection.*

3 (4) *The Secretary of Health, Education, and Welfare*
4 *shall publish within six months of enactment of this Act, and*
5 *thereafter maintain at least annually, a list of all sub-*
6 *stances used or found in the workplace and known to be po-*
7 *tentially toxic and the concentrations at which such toxicity is*
8 *known to occur. He shall determine following a written*
9 *request by any employer or authorized representative of em-*
10 *ployees, specifying with reasonable particularity the grounds*
11 *on which the request is made, whether any substance normally*
12 *found in the place of employment has potentially toxic effects*
13 *in such concentrations as used or found; and shall submit such*
14 *determination both to employers and affected employees as*
15 *soon as possible. If the Secretary of Health, Education, and*
16 *Welfare determines that any substance is potentially toxic at*
17 *the concentrations in which it is used or found in a place of*
18 *employment, and such substance is not covered by an occupa-*
19 *tional safety or health standard promulgated under section 6,*
20 *the Secretary of Health, Education, and Welfare shall im-*
21 *mediately submit such determination to the Secretary, together*
22 *with all pertinent criteria.*

23 (5) *Within two years of enactment of this Act, and*
24 *annually thereafter, the Secretary of Health, Education, and*
25 *Welfare shall conduct and publish industrywide studies of the*

1 effect of chronic or low-level exposure to industrial mate-
2 rials, processes, and stresses on the potential for illness,
3 disease, or loss of functional capacity in aging adults.

4 (6) The Secretary of Health, Education, and Welfare
5 is authorized to make inspections and question employers
6 and employees as provided in section 8 of this Act in order
7 to carry out his functions and responsibilities under this
8 section.

9 (b) The Secretary is authorized to enter into contracts,
10 agreements, or other arrangements with appropriate public
11 agencies or private organizations for the purpose of conduct-
12 ing studies related to the establishing and applying of occu-
13 pational safety and health standards under section 6 of this
14 Act. In carrying out his functions under this subsection,
15 the Secretary and the Secretary of Health, Education, and
16 Welfare shall cooperate in order to avoid any duplication of
17 efforts under this section.

18 (c) Information obtained by the Secretary and the
19 Secretary of Health, Education, and Welfare under this
20 section shall be disseminated by the Secretary to employers
21 and employees and organizations thereof.

22 (d) The Secretary of Health, Education, and Wel-
23 fare, after consultation with the Secretary of Labor and
24 with the heads of other appropriate Federal agencies, shall

1 *conduct, either directly or by way of grant or contract (1)*
2 *education programs to provide an adequate supply of quali-*
3 *fied personnel to carry out the purposes of this Act, and (2)*
4 *informational programs on the importance of and proper use*
5 *of adequate safety and health equipment.*

6 *(e) The Secretary is also authorized to conduct, either*
7 *directly or by way of grant or contract, short-term training of*
8 *personnel engaged in work related to his functions under this*
9 *Act.*

10 *(f) The Secretary, in consultation with the Secretary*
11 *of Health, Education, and Welfare, shall provide for the*
12 *establishment and supervision of programs for the education*
13 *and training of employers and employees in the recognition,*
14 *avoidance, and prevention of unsafe or unhealthful working*
15 *conditions in places of employment covered by this Act, and*
16 *to consult with and advise employers and employees, and*
17 *organizations representing employers and employees, with*
18 *respect to effective means of preventing occupational injuries*
19 *and illnesses.*

20 *(g) The functions of the Secretary of Health, Educa-*
21 *tion, and Welfare under this Act shall, to the extent feasible,*
22 *be delegated to the Director of the National Institute for Oc-*
23 *cupational Safety and Health established by section 19 of*
24 *this Act.*

1 NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND
2 HEALTH

3 SEC. 19. (a) It is the purpose of this section to establish
4 a National Institute for Occupational Safety and Health in
5 the Department of Health, Education, and Welfare in order
6 to carry out the policy set forth in section 2 of this Act and
7 to perform the functions of the Secretary of Health, Educa-
8 tion, and Welfare under section 18 of this Act.

9 (b) As used in this section—

10 (1) the term "Director" means the Director of
11 the National Institute for Occupational Safety and
12 Health; and

13 (2) the term "Institute" means the National In-
14 stitute for Occupational Safety and Health.

15 (c) There is hereby established in the Department of
16 Health, Education, and Welfare a National Institute for
17 Occupational Safety and Health. The Institute shall be
18 headed by a Director who shall be appointed by the Secretary
19 of Health, Education, and Welfare, and who shall serve
20 for a term of six years unless previously removed by the
21 Secretary.

22 (d) The Institute is authorized to—

23 (1) develop and establish recommended occupa-
24 tional safety and health standards; and

25 (2) perform all functions of the Secretary of

1 *Health, Education, and Welfare under section 18 of*
2 *this Act.*

3 (e) Upon his own initiative, or upon the request of the
4 Secretary of Labor or the Secretary of Health, Education,
5 and Welfare, the Director is authorized (1) to conduct such
6 research and experimental programs as he determines is
7 necessary for the development of criteria for new and im-
8 proved occupational safety and health standards, and (2)
9 after consideration of the results of such research and ex-
10 perimental programs make recommendations concerning new
11 or improved occupational safety and health standards. Any
12 occupational safety and health standard recommended pur-
13 suant to this section shall immediately be forwarded to the
14 Secretary of Labor, and to the Secretary of Health, Educa-
15 tion, and Welfare.

16 (f) In addition to any authority vested in it by other
17 provisions of this section, the Director, in carrying out its
18 functions, is authorized to—

19 (1) prescribe such regulations as he deems neces-
20 sary governing the manner in which its functions shall
21 be carried out;

22 (2) receive money and other property donated,
23 bequeathed, or devised, without condition or restriction
24 other than that it be used for the purposes of the Insti-

1 *tute and to use, sell, or otherwise dispose of such property*
2 *for the purpose of carrying out its functions;*

3 (3) *in the discretion of the Director, receive (and*
4 *use, sell, or otherwise dispose of, in accordance with*
5 *paragraph (2)), money and other property donated,*
6 *bequeathed, or devised to the Institute with a condi-*
7 *tion or restriction, including a condition that the Insti-*
8 *ute use other funds of the Institute for the purposes*
9 *of the gift;*

10 (4) *in accordance with the civil service laws,*
11 *appoint and fix the compensation of such personnel*
12 *as may be necessary to carry out the provisions of this*
13 *section;*

14 (5) *obtain the services of experts and consultants*
15 *in accordance with the provisions of section 3109 of*
16 *title 5, United States Code;*

17 (6) *accept and utilize the services of voluntary and*
18 *noncompensated personnel and reimburse them for travel*
19 *expenses, including per diem, as authorized by section*
20 *5703 of title 5, United States Code;*

21 (7) *enter into contracts, grants or other arrange-*
22 *ments, or modifications thereof to carry out the provi-*
23 *sions of this section, and such contracts or modifications*
24 *thereof may be entered into without performance or other*
25 *bonds, and without regard to section 3709 of the Revised*

1 *Statutes, as amended (41 U.S.C. 5), or any other*
2 *provision of law relating to competitive bidding:*

3 *(8) make advance, progress, and other payments*
4 *which the Director deems necessary under this title with-*
5 *out regard to the provisions of section 3648 of the Revised*
6 *Statutes, as amended (31 U.S.C. 529): and*

7 *(9) make other necessary expenditures.*

8 *(g) The Institute shall submit to the Secretary of Health,*
9 *Education, and Welfare, to the President, and to the Con-*
10 *gress an annual report of its operations under this Act, which*
11 *shall include a detailed statement of all private and public*
12 *funds received and expended by it, and such recommenda-*
13 *tions as the Institute deems appropriate.*

14 **GRANTS TO THE STATES; STATISTICS**

15 *SEC. 20. (a) (1) The Secretary is authorized, during the*
16 *fiscal year ending June 30, 1971, and the two succeeding*
17 *fiscal years, to make grants to the States which have desig-*
18 *nated a State agency under section 16(c) to assist them—*

19 *(A) in identifying their needs and responsibilities in*
20 *the area of occupational safety and health.*

21 *(B) in developing State plans under section 16, or*

22 *(C) in developing plans for—*

23 *(i) establishing systems for the collection of*
24 *information concerning the nature and frequency of*
25 *occupational injuries and diseases;*

(ii) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(iii) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(2) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in paragraph (1) of this subsection.

(3) The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(4) Any State agency designated by the Governor of the State desiring a grant under this section shall submit an application therefor to the Secretary.

(5) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(6) The Federal share for each State grant under paragraphs (1) or (2) of this subsection may not exceed 90 per centum of the total cost of the application. In the event the Federal share for all States under either such subsection is

1 *not the same, the differences among the States shall be*
2 *established on the basis of objective criteria.*

3 *(7) The Secretary is authorized to make grants to the*
4 *States to assist them in administering and enforcing pro-*
5 *grams for occupational safety and health contained in State*
6 *plans approved by the Secretary pursuant to section 16 of*
7 *this Act. The Federal share for each State grant under this*
8 *subsection may not exceed 50 per centum of the total cost*
9 *to the State of such a program. The last sentence of para-*
10 *graph (6) shall be applicable in determining the Federal*
11 *share under this subsection.*

12 *(8) Prior to June 30, 1973, the Secretary shall, after*
13 *consultation with the Secretary of Health, Education, and*
14 *Welfare, transmit a report to the President and to the Con-*
15 *gress, describing the experience under the grant programs*
16 *authorized by this section and making any recommendations*
17 *he may deem appropriate.*

18 *(b)(1) In order to further the purposes of this Act,*
19 *the Secretary shall develop and maintain an effective pro-*
20 *gram of collection, compilation, and analysis of occupational*
21 *safety and health statistics.*

22 *(2) To carry out his duties under paragraph (1) of*
23 *this subsection, the Secretary is authorized to—*

24 *(A) promote, encourage, or directly engage in pro-*

grams of studies, information and communication concerning occupational safety and health statistics;

(B) make grants to States or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics; and

(C) arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(3) The Federal share of each State grant under paragraph (2) of this section may be up to 50 per centum of the State's total cost.

(4) The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

(5) On the basis of the records made and kept pursuant to section 8(c) of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

AUDITS

SEC. 21. (a) Each recipient of a grant under this Act shall keep such records as the Secretary or the Secretary of Health, Education, and Welfare shall prescribe, including

1 records which fully disclose the amount and disposition of
2 the project or undertaking in connection with which such
3 grant is made or used, and the amount of that portion of
4 the cost of the project or undertaking supplied by other
5 sources, and such other records as will facilitate an effective
6 audit.

7 (b) The Secretary or the Secretary of Health, Educa-
8 tion, and Welfare, and the Comptroller General of the United
9 States, or any of their duly authorized representatives, shall
10 have access for the purpose of audit and examination to
11 any books, documents, papers, and records of the recipients
12 of any grant under this Act that are pertinent to any such
13 grant.

14

ANNUAL REPORT

15 SEC. 22. Within one hundred and twenty days following
16 the convening of each regular session of each Congress, the
17 Secretary and the Secretary of Health, Education, and Wel-
18 fare shall each prepare and submit to the President for trans-
19 mittal to the Congress a report upon the subject matter of this
20 Act, the progress toward achievement of the purpose of
21 this Act, the needs and requirements in the field of occupa-
22 tional safety and health, and any other relevant informa-
23 tion. Such reports shall include information regarding occu-
24 pational safety and health standards, and criteria for such
25 standards, developed during the preceding year; evaluation

1 of standards and criteria previously developed under this
2 Act, defining areas of emphasis for new criteria and stand-
3 ards; an evaluation of the degree of observance of applicable
4 occupational safety and health standards and summary of
5 inspection and enforcement activity undertaken; analysis
6 and evaluation of research activities for which results have
7 been obtained under governmental and nongovernmental
8 sponsorship; an analysis of major occupational diseases;
9 evaluation of available control and measurement technol-
10 ogy for hazards for which standards or criteria have been
11 developed during the preceding year; description of coopera-
12 tive efforts undertaken between Government agencies and
13 other interested parties in the implementation of this Act
14 during the preceding year; a progress report on the develop-
15 ment of an adequate supply of trained manpower in the field
16 of occupational safety and health, including estimates of
17 future needs and the efforts being made by Government and
18 others to meet those needs; listing of all toxic substances in
19 industrial usage for which labeling requirements, criteria,
20 or standards have not yet been established; and such recom-
21 mendations for additional legislation as are deemed necessary
22 to protect the safety and health of the worker and improve
23 the administration of this Act.

1 NATIONAL COMMISSION ON STATE WORKMEN'S
2 COMPENSATION LAWS

3 SEC. 23. (a)(1) *The Congress hereby finds and de-*
4 *clares that—*

5 (A) *the vast majority of American workers, and*
6 *their families, are dependent on workmen's compensation*
7 *for their basic economic security in the event such work-*
8 *ers suffer disabling injury or death in the course of their*
9 *employment; and that the full protection of American*
10 *workers from job-related injury or death requires an*
11 *adequate, prompt, and equitable system of workmen's*
12 *compensation as well as an effective program of occupa-*
13 *tional health and safety regulation; and*

14 (B) *in recent years serious questions have been*
15 *raised concerning the fairness and adequacy of present*
16 *workmen's compensation laws in the light of the growth*
17 *of the economy, the changing nature of the labor force,*
18 *increases in medical knowledge, changes in the hazards*
19 *associated with various types of employment, new tech-*
20 *nology creating new risks to health and safety, and in-*
21 *creases in the general level of wages and the cost of living.*

22 (2) *The purpose of this section is to authorize an*
23 *effective study and objective evaluation of State workmen's*

1 compensation laws in order to determine if such laws
2 provide an adequate, prompt, and equitable system of com-
3 pensation for injury or death arising out of or in the course
4 of employment.

5 (b) There is hereby established a National Commission
6 on State Workmen's Compensation Laws (hereinafter re-
7 ferred to as the "Commission").

8 (c) (1) The Commission shall be composed of fifteen
9 members to be appointed by the President from among mem-
10 bers of State workmen's compensation boards, representa-
11 tives of insurance carriers, business, labor, members of the
12 medical profession having experience in industrial medicine
13 or in workmen's compensation cases, educators having spe-
14 cial expertise in the field of workmen's compensation, and
15 representatives of the general public. The Secretary of Labor,
16 the Secretary of Commerce, and the Secretary of Health,
17 Education, and Welfare shall be *ex officio* members of the
18 Commission.

19 (2) Any vacancy in the Commission shall not affect its
20 powers.

21 (3) The President shall designate one of the members
22 to serve as Chairman and one to serve as Vice Chairman of
23 the Commission.

24 (4) Eight members of the Commission shall constitute a
25 quorum.

1 (d)(1) The Commission shall undertake a compre-
2 hensive study and evaluation of State workmen's compensa-
3 tion laws in order to determine if such laws provide an
4 adequate, prompt, and equitable system of compensation.
5 Such study and evaluation shall include, without being lim-
6 ited to, the following subjects: (A) the amount and duration
7 of permanent and temporary disability benefits and the cri-
8 teria for determining the maximum limitations thereon. (B)
9 the amount and duration of medical benefits and provisions
10 insuring adequate medical care and free choice of physician.
11 (C) the extent of coverage of workers, including exemptions
12 based on numbers or type of employment. (D) standards for
13 determining which injuries or diseases should be deemed com-
14 pensable. (E) rehabilitation. (F) coverage under second or
15 subsequent injury funds. (G) time limits on filing claims.
16 (H) waiting periods. (I) compulsory or elective coverage.
17 (J) administration. (K) legal expenses. (L) the feasibility
18 and desirability of a uniform system of reporting information
19 concerning job-related injuries and diseases and the operation
20 of workmen's compensation laws. (M) the resolution of con-
21 flict of laws, extraterritoriality and similar problems arising
22 from claims with multistate aspects. (N) the extent to which
23 private insurance carriers are excluded from supplying work-
24 men's compensation coverage and the desirability of such
25 exclusionary practices, to the extent they are found to exist.

1 (O) the relationship between workmen's compensation on
2 the one hand, and old-age, disability, and survivors insur-
3 ance and other types of insurance, public or private, on the
4 other hand, (P) methods of implementing the recommenda-
5 tions of the Commission.

6 (2) The Commission shall transmit to the President
7 and to the Congress not later than October 1, 1971, a final
8 report containing a detailed statement of the findings and
9 conclusions of the Commission, together with such recom-
10 mendations as it deems advisable.

11 (e)(1) The Commission or, on the authorization of
12 the Commission, any subcommittee or members thereof, may,
13 for the purpose of carrying out the provisions of this title,
14 hold such hearings, take such testimony, and sit and act at
15 such times and places as the Commission deems advisable.
16 Any member authorized by the Commission may administer
17 oaths or affirmations to witnesses appearing before the Com-
18 mission or any subcommittee or members thereof.

19 (2) Each department, agency, and instrumentality of
20 the executive branch of the Government, including independ-
21 ent agencies, is authorized and directed to furnish to the
22 Commission, upon request made by the Chairman or Vice
23 Chairman, such information as the Commission deems neces-
24 sary to carry out its functions under this section.

25 (f) Subject to such rules and regulations as may be

1 *adopted by the Commission, the Chairman shall have the*
2 *power to—*

3 (1) *appoint and fix the compensation of an execu-*
4 *tive director, and such additional staff personnel as he*
5 *deems necessary, without regard to the provisions of*
6 *title 5, United States Code, governing appointments in*
7 *the competitive service, and without regard to the pro-*
8 *visions of chapter 51 and subchapter III of chapter 53*
9 *of such title relating to classification and General Sched-*
10 *ule pay rates, but at rates not in excess of the maximum*
11 *rate for GS-18 of the General Schedule under section*
12 *5332 of such title, and*

13 (2) *procure temporary and intermittent services to*
14 *the same extent as is authorized by section 3109 of*
15 *title 5, United States Code.*

16 (g) *The Commission is authorized to enter into con-*
17 *tracts with Federal or State agencies, private firms, institu-*
18 *tions, and individuals for the conduct of research or surveys,*
19 *the preparation of reports, and other activities necessary to*
20 *the discharge of its duties.*

21 (h) *Members of the Commission shall receive com-*
22 *penetration for each day they are engaged in the performance*
23 *of their duties as members of the Commission at the daily*
24 *rate prescribed for GS 18 under section 5332 of title 5,*
25 *United States Code, and shall be entitled to reimbursement*

1 *for travel, subsistence, and other necessary expenses incurred*
2 *by them in the performance of their duties as members of the*
3 *Commission.*

4 (i) *There are hereby authorized to be appropriated*
5 *such sums as may be necessary to carry out the provisions*
6 *of this section.*

7 (j) *On the ninetieth day after the date of submission*
8 *of its final report to the President, the Commission shall*
9 *cease to exist.*

10 *ECONOMIC ASSISTANCE TO SMALL BUSINESSES*

11 *SEC. 24. (a) Section 7(b) of the Small Business Act,*
12 *as amended, is amended—*

13 (1) *by striking out the period at the end of “para-*
14 *graph (5)” and inserting in lieu thereof “; and”; and*

15 (2) *by adding after paragraph (5) a new para-*
16 *graph as follows:*

17 “(6) *to make such loans (either directly or in co-*
18 *operation with banks or other lending institutions through*
19 *agreements to participate on an immediate or deferred*
20 *basis) as the Administration may determine to be neces-*
21 *sary or appropriate to assist any small business concern*
22 *in affecting additions to or alterations in the equipment,*
23 *facilities, or methods of operation of such business in*
24 *order to comply with the applicable standards promul-*
25 *gated pursuant to section 6 of the Occupational Safety*

1 *and Health Act or standards adopted by a State pursuant*
 2 *to a plan approved under section 16 of the Occupational*
 3 *Safety and Health Act, if the Administration determines*
 4 *that such concern is likely to suffer substantial economic*
 5 *injury without assistance under this paragraph."*

6 *(b) The third sentence of section 7(b) of the Small*
 7 *Business Act, as amended, is amended by striking out "or*
 8 *(5)" after "paragraph (3)" and inserting a comma fol-*
 9 *lowed by "(5) or (6)".*

10 *(c) Section 4(c)(1) of the Small Business Act, as*
 11 *amended, is amended by inserting "7(b)(6)," after "7(b)*
 12 *(5),".*

13 *(d) Loans may also be made or guaranteed for the*
 14 *purposes set forth in section 7(b)(6) of the Small Business*
 15 *Act, as amended, pursuant to the provisions of section 202*
 16 *of the Public Works and Economic Development Act of*
 17 *1965, as amended.*

18 *ADDITIONAL ASSISTANT SECRETARY OF LABOR*

19 *SEC. 25. (a) Section 2 of the Act of April 17, 1946 (60*
 20 *Stat. 91) as amended (29 U.S.C. 553) is amended by—*

21 *(1) striking out "four" in the first sentence of such*
 22 *section and inserting in lieu thereof "five"; and*

23 *(2) adding at the end thereof the following new*
 24 *sentence: "One of such Assistant Secretaries shall be an*

[From the Congressional Record—Senate, Oct. 8, 1970]

THE OCCUPATIONAL HEALTH AND SAFETY BILL

Mr. SAXBE. Mr. President, the occupational health and safety bill will come before the Senate for consideration on Monday next. A substitute bill will be offered.

I invite Senators to study the two bills, and for that purpose I ask unanimous consent to have printed in the Record a statement of the major differences between the two measures.

There being no objection, the statement was ordered to be printed in the Record, as follows:

MAJOR DIFFERENCES BETWEEN THE OCCUPATIONAL SAFETY AND HEALTH BILL REPORTED BY THE SENATE LABOR AND PUBLIC WELFARE COMMITTEE AND THE SUBSTITUTE BILL (S. 4404)

I. GENERAL

Before discussing the important differences between these bills, we should first put things in perspective by pointing out that both measures have much in common; they both share the same purpose and, in fact, have a number of comparable provisions.

The shared objective of the bills is to reduce the number and severity of work-related injuries and illnesses which, in spite of current efforts, continue at high levels, and which cause human misfortune and economic waste.

Both measures recognize that, while private initiative and State efforts to make the workplace safe and healthful have been excellent in certain cases, these efforts are uneven, unbalanced, and incomplete. For example, the average injury frequency rate for employers who are members of the privately sponsored National Safety Council is 4.6 disabling injuries per million employee-hours worked; but for nonmember employers that rate is 15.6. We see a similar lopsided situation in the States. One State spends as much as \$2.70 per worker per year on safety; others spend less than 1 cent.

Existing Federal legislation in the area of job safety and health is also uneven in its application. Some Federal laws apply only to certain industries such as the maritime industry or coal mining. Other safety legislation is applicable only in limited circumstances, e.g., the safety requirements of the Walsh-Hanley Public Contracts Act apply only to work involving certain Government contracts.

Both bills reflect the fundamental judgment that what is needed is comprehensive Federal legislation which would apply to all industries, and in a single national effort would (1) establish adequate occupational safety and health standards; (2) provide for greater coordination of existing Federal safety and health responsibilities; (3) bolster State programs not only by furnishing Federal grants, but by providing a floor of Federal standards which the States can build upon; and (4) take advantage of, and encourage further private initiative to assure safe and healthful employment.

Briefly, both bills would attack the problem of work hazards on three fronts: research, education, and regulation.

One more point before discussing the differences between the bills. This point concerns the regulatory aspect; the research and education provisions of both bills are not controversial. Neither bill contains, as one might reasonably imagine, a list of specific "do's and don'ts" for keeping workplaces safe and healthful. Industrial safety and health problems are as complex and changing as American industry itself. They cannot be solved by a lengthy list of prohibitions spelled out in a statute.

Instead, the bills would set up a legal structure; that is, they would empower an administrative agency to issue detailed safety and health regulations, called

standards, which will have the force and effect of law. They also provide the legal procedures for investigating cases of alleged violations of standards; for conducting hearings to determine whether the standards have been violated, and, if the standards have been violated, for imposing sanctions on violators.

In each bill the structure includes authority to issue citations to employers, authority to issue orders to correct violations, and where necessary, authority to enforce those orders in the Federal courts.

II. GENERAL DIFFERENCES

The difference between the bills lies not in their purpose but in the type of structure each sets up for achieving that purpose. The reported bill's manner of achieving its purpose can only be self-defeating.

The true goal of any occupational safety and health bill can be stated simply: to foster improved standards of health and safety for American workers and do it in a way that is reasonable and fair. The reported bill is, in a word, unfair.

If legislation is going to be genuinely effective in promoting safe and healthful working conditions, it must be based on the clear recognition that its success ultimately depends upon the cooperation and day-to-day concern of employers regarding the many faceted problems of job safety and health. This does not in any way imply a naive faith in voluntarism. But it does mean that all the good that could be achieved through a bill's education, research and enforcement provisions should not be rendered ineffective by inevitable disillusionment with its unfair regulatory procedures. Unfair regulatory procedures will only alienate employers from State and Federal officials who ought to be guiding employers toward compliance.

The reported bill follows the simplistic approach of placing all functions in the Secretary of Labor. He would set the safety and health standards, conduct the inspections, prosecute violations before Labor Department hearing examiners; and he again, would be the one to issue citations and corrective orders, and to assess the monetary penalties. The reported bill's regulatory procedures have been compared to having the Chief of Police, in addition to his regular duties of conducting inspections, also write the criminal laws and then act as judge and jury.

The substitute bill, on the other hand, refocuses responsibility for job safety and health by distributing the regulatory functions. In an effort to insure the fairest and most efficient procedures for administering and enforcing the new law, the substitute bill would set up an independent Occupational Safety and Health Board whose five members would be appointed by the President. The Board would perform the sole function of issuing occupational safety and health standards.

Under both bills, the Secretary of Labor would be authorized to conduct inspections and investigations. But under the substitute bill, the Secretary would not hear the case and pass judgment on the offender. Instead, the substitute proposal would create an independent Presidentially appointed Occupational Safety and Health Appeals Commission whose only function would be to conduct hearings on alleged violations discovered by the Secretary; and the Commission would, on the basis of its decision, issue any necessary corrective orders, as well as assess civil penalties.

Establishing separate governmental agencies not only for the purpose of insuring fair procedures, but also for emphasizing the importance of new programs, is neither new nor out of date. There are many number of agencies which are independent of the Labor Department although they have responsibilities in the labor field, for example the Federal Mediation and Conciliation Service, the National Labor Relations Board, and the National Mediation Board. Recently, a body of private citizens appointed by former President Johnson to make an extensive investigation of consumer safety matters recommended the establishment of a separate independent National Commission on Product Safety to set safety standards for household products.

The five members of the standards-setting Board, which would be set up under the substitute bill, would be appointed by the President solely because they are high-caliber professionals in the field of safety and health. The members would serve at the pleasure of the President so that they could not become the servant of any special interest and would remain responsible to the President.

Lastly, the administration's desire to create an independent standards setting Board has been in response to the recommendations of a number of prestigious

and respected organizations which have been successfully working over the years in the field of occupational safety and health. The following organizations have all recommended the creation of a special governmental body to work in the development of occupational safety and health standards: The National Safety Council, The American Industrial Hygiene Association, the Industrial Medical Association, The American Academy of Occupational Medicine, The American Society of Safety Engineers, and a number of State health or industrial safety agencies.

III. SPECIFIC DIFFERENCES

1. *Standards*

The substitute proposal provides for setting permanent standards through the formal procedures of the Administrative Procedure Act (APA). This means that the type of hearing to be held would be one where a great variety of views could be heard. The substitute would provide the kind of forum which permits the greatest degree of participation and involvement of those who will be affected by the standards which the Board seeks to issue. These formal procedures also provide that the Board's standards would be based on the substantial evidence in the record which is developed in connection with the hearings.

In contrast, the reported bill provides for setting permanent standards using only the informal procedures of the APA. This means that interested persons may send in their written views on proposed standards to the Labor Department. If the Secretary wishes, he may hold a hearing; but in this optional hearing no formal record would be made, so the standards could not be based on the substantial evidence of record.

The reported bill, however, does require a hearing in one instance, i.e., where an objection to a proposed standard is made by an affected person. But the reported bill's language is unclear about the nature of the hearing in this particular situation. It is possible that even this hearing would be like the one just discussed; that is, it would be informal and have no record for developing substantial evidence. In short, the reported bill provides for the minimum amount of participation in the standard-setting process by those whose business, and health and lives would be affected by the standards.

2. *Procedures in imminent danger situations*

The reported bill would permit an inspector to order the closing of a plant where there is an imminent danger to the lives of employees. It is true that the reported bill requires that the Secretary be assured that in such circumstances there is no time to obtain a court order. It is also true that if the Secretary delegates his power to an inspector, the inspector must check with his superiors in the Labor Department in connection with exercising this power. Nevertheless, the fact remains that the reported bill clearly places the power to close down an employer's business in the sole hands of Labor Department personnel; and the power can be used.

The substitute bill also provides for closing down a plant operation where workers lives are at stake, but, here again, there is a difference in the manner in which this would be done. The substitute bill, with its emphasis on fair procedures, would not give this power to an inspector. Instead, the substitute proposal would authorize the Secretary of Labor to seek quickly obtainable injunctive relief from the appropriate Federal district court.

Under the reported bill's imminent-harm provisions, Labor Department personnel would play the roles of prosecutor, judge, and jury. On the other hand, by providing that relief in these situations come exclusively from the district court, the substitute bill would again provide the needed element of fairness.

3. *General safety and health requirement*

The substitute bill recognizes that specific standards could not be fashioned to cover every conceivable situation, and that lives should not be put in jeopardy merely because some specific standard has not been promulgated to cover a situation which from all appearances is dangerous. Therefore, the substitute proposal includes a general safety and health requirement to cover such circumstances. So, in addition to requiring employers to comply with specific standards promulgated by the Board, the substitute bill would require employers to furnish employment and places of employment which are free from any hazards which are readily apparent and are likely to result in death or serious harm to employees.

The reported bill also has a general requirement. But it provides that an employer maintain working places "free from recognized hazards." The reported bill's language of this requirement is clearly less precise than its counterpart in the substitute bill. The word "hazard" is vague; and standing alone without explanation it may be subject to many interpretations. This deficiency in the reported bill's general requirement would be overcome by the substitute bill which provides, both clearly and fairly that an employer shall furnish working conditions "which are free from any hazards which are readily apparent and are causing or are likely to cause death or serious physical harm to his employees."

4. Penalties

Both the reported bill and the substitute bills are similar in the sense that for the most part they rely on civil monetary penalties rather than criminal sanctions as the means of assuring compliance with the act's requirements. Both measures, however, would make it a crime to forcibly impede enforcement activities.

However, there is one important difference with respect to criminal penalties; that is, the reported bill would make it a crime to give advance notice of an impending inspection. The provision of the reported bill is probably the clearest example of the police-oriented approach which permeates that bill. The reported bill obviously does not consider the occupational safety and health proposal as remedial social legislation. Rather than guiding employers by showing them how best to improve working conditions, the reported bill assumes that many employers are furtive wrongdoers who must be caught in the net. A criminal provision of this type has no place in legislation which primarily seeks to enlist the necessary goodwill and cooperation of employers. Strong enforcement tools and sanctions should, indeed, be included in this legislation. They are included in the substitute bill.

5. Demand for inspections

The reported bill would permit employees or their representatives to request the Secretary in writing to make an inspection where they believe: (1) that a violation of safety and health standard exists that threatens physical harm, or (2) that an imminent danger exists.

Under this provision, if the Secretary determines that there are reasonable grounds that the alleged violation or danger exists, then he is required to conduct a special inspection.

While no such provision is expressly included in the substitute bill, it is contemplated that the Secretary would, of course, give full consideration to employee complaints of safety and health violations, and he would conduct necessary inspections. The Secretary now does exactly this under existing safety and health laws he administers, such as the Maritime Safety Act. In fact, complaints from employees are often the chief means through which the Secretary learns about safety violations and initiates inspections.

However, under existing safety laws the Secretary is not *required* to respond to every complaint. And rightly so, because of the limited resources at his disposal.

On the other hand, the reported bill would require the Secretary to make an inspection in every instance where a written employee complaint has any reasonable basis. The reported bill contains no language to help the Secretary perform the obviously overwhelming task of carrying out the responsibility of responding to what could be literally thousands of such complaints.

Given the Secretary's limited resources, the reported bill's harsh provisions on this point could easily be criticized as nothing more than heroics which will only serve to lessen the Secretary's prestige because of the impossibility of his task, and consequently, to frustrate employees' expectations raised by false promises of a massive response to their request for help.

OCCUPATIONAL SAFETY AND HEALTH LEGISLATION

Mr. ALLORD. Mr. President, on behalf of the Senator from Colorado (Mr. Dominick), I ask unanimous consent that there be printed in the Record a document entitled "Comparative Analysis of Significant Provisions of the Occupational Safety and Health Bill, S. 2193, reported by the Senate Committee on Labor and Public Welfare, and

S.4404, and Substitute Occupational Safety and Health Bill." It is my understanding that a substitute amendment identical to S. 4404 will be offered by the Senator from Colorado (Mr. Dominick) when S. 2913 is considered and this comparative analysis is intended to aid in the consideration of the substitute.

There being no objection, the document was ordered to be printed in the Record, as follows:

COMMITTEE REPORTED BILL, S. 2193

I. Coverage

Covers all employers engaged in business affecting interstate commerce, including as employers both Federal and State and local governments (secs. 2-3).

II. Exemption and Variance

Employers may apply to Secretary of Labor for a variance from specific standards if employer provides working conditions just as safe as Federal standard conditions. (see 6(c)).

III. Standards

1. Authority To Issue Standards

Secretary of Labor (secs. 6-7).

2. Types of Mandatory Standards

(a) *Early standards of three types:*

(1) national consensus standards; (2) already existing Federal standards; and (3) standards also promulgated prior to the date of enactment of this Act by national organizations but by a non-consensus method. The first two types of standards must be issued by the Secretary as soon as practicable within 2 years following the effective date, unless Secretary determines that their promulgation will not result in improved safety or health for certain employees. During the same period, the Secretary may also promulgate the non-consensus standards. (sec. 6).

SUBSTITUTE BILL, S. 4404

I. Coverage

Same. (secs. 2-3).

II. Exemption and Variance

Same, except substitute bill calls it an "exemption" and not a variance; also employer applies to the Board and not the Secretary for exemption. (sec. 6(1)).

III. Standards

1. Authority To Issue Standards

National Occupational Safety and Health Board, separate and independent of other Federal agencies. Board is composed of five members, all qualified by previous training, education, or experience in the field of occupational safety and health; appointed by, and serve at the pleasure of the President. (secs. 6 and 8).

2. Types of Mandatory Standards

(a) *Early standards of two types:*

(1) national consensus standards; and (2) already existing Federal standards. The standards must be issued by the Board, as soon as practicable within 3 years following the effective date, unless the Board determines that these standards will not assure safer and more healthful working conditions. (sec. 6(b)).

The Secretary, under his authority to set permanent standards, is empowered to "promulgate, modify or revoke any standard." (sec. 6(b)).

(b) *Emergency temporary standards* must be promulgated by the Secretary if he determines that they are needed to combat grave danger from toxic or *physically harmful substances*, or from new hazards. These standards stay in effect until replaced by permanent standards which the Secretary is required to issue within six months after emergency temporary standards are issued. (sec. 6(c)).

(c) *Permanent standards*.

3. Procedures for Setting the Different Types of Standards

(a) *Early standards* are promulgated by the Secretary by rule. APA does not apply, except in the case of non-consensus standard where informal APA rulemaking procedures apply; that is, submission of written views with informal hearing in the Secretary's discretion. (sec. 6(a)).

(b) *Emergency temporary standards* become effective immediately on publication in the Federal Register. (sec. 6(c)(1)).

Committee Reported Bill,
(c) *Permanent standards* are promulgated by the Secretary under informal rulemaking procedures of APA; but a *hearing is required*, if an interested person objects to a proposed standard. The use of advisory committees is authorized, but not mandatory.

Secretary is required to issue a standard within 60 days after the expiration of the period provided for the submission of reviews (as required in informal APA rulemaking), or within 60 days after the hearing (required where an objection is made) ends.

There is a specific provision that the early standards remain in effect until superseded by permanent standards.

(b) *Emergency temporary standards*. Same, except *Board*, and not the Secretary, would promulgate them; and under the substitute bill the grave danger would be one which results from "exposure to substances determined to be toxic or from new hazards resulting from new processes . . ."

(c) Also provides for permanent standards.

3. Procedures for Setting the Different Types of Standards

(a) *Early standards*, the same, except as pointed out above, no non-consensus standards are issued under the substitute bill. The *Board*, of course, issues these standards, not the Secretary. (sec. 6(b)).

(b) *Emergency temporary standards*, same, (sec. 6(i)(1)).

Substitute Bill, S. 4404

(c) *Permanent standards* are set by the Board, using *formal rule-making* procedures of APA which include the protection afforded by sections 7 and 8 of the APA. Same as reported bill as far as use of advisory committees is concerned.

Board is required to promulgate a standard 60 days after the formal hearing ends (if advisory committee is utilized), and 120 days afterwards (if no advisory committee is used).

Also, Secretary of HEW or Secretary of Labor may request the setting or modification of a standard, and the Board *must* commence standard-setting procedures within 60 days after request is made (sec. 6(j) through (m)).

4. Tests for Standards

In setting standards, Secretary is required to set the ones which are *most feasible and feasible* assure that no employee will suffer any *material* loss of health or functional capacity, or diminished life expectancy, even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. (sec. 5(a)(5)).

Labels, Warnings, Monitoring or Measuring, and Medical Tests. Provides that standards shall prescribe the use of labels, warnings, and where appropriate, employer monitoring or measuring of employee exposure to hazards, plus types and frequency of medical examinations or other tests which shall be made available by the employer at his cost, to employees exposed to hazards. Where medical examinations are in the nature of research, such examinations may be furnished at the expense of HEW. (sec. 6(b)(6)).

6. Judicial Review of Standards

Judicial review of standards is provided in the various United States Courts of Appeals. This right may be exercised up to 60 days after the standard is promulgated. (sec. 6(f)). Judicial review of standards would also be possible in enforcement proceedings.

IV. General duty

Contains a general requirement that employers shall furnish every agent "which is free from recognized hazards so as to provide safe and healthful working conditions." (sec. 5(a)(1)).

V. Specific duty

Contains specific duty that (1) employers shall comply with safety and health standards and that (2) employees shall comply with standards which are applicable to their own conduct and actions. (sec. 5(b)).

4. Tests for Standards

No comparable provision.

Labels, Warnings, Monitoring or Measuring, and Medical Tests. Provides that standards must prescribe the posting of such labels or warnings as are necessary to apprise employees of the nature and extent of hazard and of suggested methods of avoiding or ameliorating them. (sec. 6(m)). Standards promulgated under the substitute bill may also provide for medical examinations and the monitoring or measuring of employee exposure to hazards. Contains provision authorizing an appropriation for the Secretary's purchase of equipment for such monitoring or measuring. (sec. 6(h)).

6. Judicial Review of Standards

Similar provision, except the United States Court of Appeals for the District of Columbia is the only forum. Unlike the reported bill this judicial review of standards is made an *exclusive* remedy. The time-period for review is 30 days after publication of the standard. (sec. 13(b)).

IV. General duty

Contains a more detailed general requirement that employers furnish employment free from *readily apparent* hazards *which are causing or are likely to cause death or serious physical harm*. (sec. 5).

V. Specific duty

Same as to employers but imposes no duty on employees, although the "purpose" section speaks of "employers and employees having separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions." (sec. 2).

VI. Enforcement

1. In General

Enforced by the Secretary of Labor before Labor Department hearing examiners. Where necessary, the Secretary's orders would be enforced in the United States Courts of Appeals. (sec. 10).

2. Inspections and Investigations

(a) *In general* Secretary of Labor is authorized to make inspections and investigations to enforce the Act.

(b) "*Walk-Around*." Subject to regulations of the Secretary, permits employees or their authorized representative to accompany the inspector during his inspection, for the purpose of aiding the inspection. If no authorized representative is available then the inspector shall consult with a reasonable number of employees.

(c) *Demand for Inspections*. Permits employees or their representatives to request the Secretary in writing to make an inspection where they believe (1) that a violation of a safety and health standard exists that threatens physical harm, or (2) that an imminent danger exists. If the Secretary determines that there are reasonable grounds to believe that the alleged violations or danger exists, then he is *required* to conduct a special investigation as soon as practicable. (sec. 8(f)(1)). Also, employees may demand a written explanation from the Secretary in cases of his failure to issue a citation. (sec. 8(f)(2)).

3. Citations and Civil Penalties

Reported bill provides that the Secretary shall issue a citation for every violation unless *de minimis*, but in *de minimis* cases he shall issue a "notice."

Any employer who violates a specific standard, or other requirements of the Act, such as record-keeping, and has received a citation for it, is liable to a civil penalty of up to \$1,000 for each violation.

VI. Enforcement

1. In General

Enforced by Secretary of Labor before an independent Federal agency, the Occupational Safety and Health Appeals Commission set up under section 11. Where necessary, corrective orders of the Commission may be enforced by the Secretary in the United States Courts of Appeals. (sec. 10, 11, and 13).

2. Inspections and Investigations

(a) In general, same as reported bill.

(b) Also has "walk-around" provision but the right of an employee-authorized representative to accompany an inspector on inspection is contingent upon the employer's exercising his option to accompany the inspector. There is no provision for substituting a reasonable number of employees where no employee-authorized representative is available. (sec. 9(b)).

(c) No such provision.

3. Citations and Civil Penalties

The substitute bill also provides that the Secretary shall issue a citation for every violation of the Act's requirements unless *de minimis*, and he must do so within 45 days of the occurrence of the violation; and no citation may be issued after the expiration of three months after the occurrence of a violation. (sec. 10).

Any employer who fails to correct a violation for which a citation has been issued within the time specified or who fails to comply with a temporary order in all future harm situation is liable for a civil penalty of up to \$1,000 for each day such a violation continues. This penalty would, of course, be applicable to citations issued when the potential requirement has been violated.

Any willful violation of a specific standard or of certain other requirements of the Act is liable to a fine of up to \$10,000 plus up to six months in jail, and \$20,000 and up to a year in jail for a second violation of a willful violation. (sec. 14). (See criminal penalty section of this chart.)

4. Enforcement Procedures

Where Secretary issues a citation, employer has 15 days within which to contest it by requesting Secretary to hold administrative hearing before Labor Department hearing examiners. On the basis of the hearing, Secretary issues corrective orders. If not timely contested citation becomes final order not subject to review. Secretary may enforce his orders in the United States Courts of Appeals where employer may also seek review, unless the order is one which becomes final because it was uncontested. (sec. 10).

5. Criminal Penalties

(a) Makes it a misdemeanor (\$10,000 fine and up to six months in jail) to willfully violate any specific standard and certain other of the Act's requirements; this sanction is doubled in the case of a second conviction.

(b) Makes it a misdemeanor for any person to give advance notice of an impending inspection.

(c) Amends sec. 1114 of title 18, United States Code to make it a Federal offense to assault or kill Labor Department inspectors. Various penalties including the death penalty would be possible under this provision.

A willful or repeated violation of the Act's requirements carries a possible civil penalty of up to \$10,000 per violation. It is mandatory in the case of a serious violation that the citation include a civil penalty of up to \$1,000 per violation; and ordinary violations carry a discretionary civil penalty in the same amount. A violation of a final order (or of a citation which has become a final order through an employer's failure to appeal a citation within 15 days of its issuance) carries a possible civil penalty of up to \$1,000 per violation. Each day of continued violation in this case is a separate offense. (sec. 17).

4. Enforcement Procedures

Establishes Occupational Safety and Health Appeals Commission, composed of three members appointed by the President. When Secretary of Labor issues a citation, employer has 15 days to notify the Secretary of his intention to contest the citation. If employer so contests, Secretary notifies Appeals Commission which shall afford employer with opportunity for a hearing. Enforcement of Commission's orders, where necessary, or review of these orders—would be in United States Courts of Appeals. If citation is not contested within 15-day period, it is deemed a final order of the Commission.

5. Criminal Penalties

(a) No such penalty.

(b) No such provision. Under the substitute bill the problem of advance notices would be handled administratively by the Secretary (sec. 2(b) (10)); and the States would handle this the same way. (sec. 18(c) (3)).

(c) Contains express provisions making it a Federal offense (felony, with varying degrees of fines and jail terms) to assault, to assault with a dangerous weapon, or kill inspectors carrying out the duties under the Act. Maximum penalty is life sentence.

1001 of title 18, United States Code, as the means of punishment for false statements etc.

(e) Makes it a *misdeemeanor* to discriminate against an employee for availing himself of protection under the Act (civil penalty also provided), (sec. 17).

VII. Imminent danger

Provides *only* for United States district court injunctive relief as remedy in imminent-harm situations. Rule 65 of the Federal Rules of Civil Procedure applies, except relief granted by the court without notice is effective for only 5 days. Inspector *must* notify both employer and employees that he is going to recommend to the Secretary that relief be sought.

VIII. Mandamus vs. damages

(a) If there is an *unreasonable failure* on the Secretary's part to seek relief to abate an imminent danger, the *employees* who are injured either physically or financially by such failure may recover *damages* in the United States Court of Claims.

(b) Employer-damages are also provided for. Damages for employers are determined by the United States district court which sets a sum certain which may be recovered as damages by the employer. This method is modeled on Rule 65(c) of the Federal Rules of Civil Procedure (bonding provisions). Thus, the same court which grants the injunctive relief in imminent danger situations would also determine the amount of damages. (sec. 12(e)).

etc. (sec. 14).

(e) No criminal penalty in cases of discrimination against employees for availing themselves of the protection of the Act. Instead, Secretary holds administrative hearing and orders restitution of employment, back pay, etc. (sec. 10(f)).

VII. Imminent danger

Pernits Labor Department to order the shut-down of plants or industrial processes where imminent danger exists. However, before such power is exercised, the Secretary must be assured that in such circumstances there is not time to obtain a court order first. And where the Secretary delegates his authority to an inspector, the inspector must first check with his superiors in the Labor Department before exercising his authority.

The administratively issued shut-down order may remain in effect for only 72 hours. (sec. 11(b)).

Also authorizes the Secretary to seek injunctive relief in the district courts in imminent danger situations. (sec. 11(a)).

VIII. Mandamus vs. damages

(a) If the Secretary *arbitrarily* or *capriciously* fails to issue an order or seek relief to abate an imminent danger, the employees, or their representatives may seek a *writ of mandamus* to compel the Secretary to issue the order or seek relief in the courts. (sec. 11(c)).

(b) No comparable provision.

COMMITTEE REPORTED BILL, S. 2193—continued

IX. Relationship to other laws administered by the Labor Department

(a) Provides that standards under Acts administered by the Labor Department (Walsh-Healey Act, Service Contract Act, the Maritime Safety Act, etc.) are superseded by standards issued under the Occupational Safety and Health Act. (see 4(b)(2)).

(b) "Construction Safety Act" (P.L. 91-54) is treated the same way as the Walsh-Healey Act. (see above).

SUBSTITUTE BILL, S. 4404—continued

IX. Relationship to other laws administered by the Labor Department

(a) Essentially the same, but Maritime Safety Act is not mentioned. Therefore, Maritime Safety Act would continue to be administered and enforced just as it has been. (see: 25(c)).

(b) In keeping with the recent policy of Congress with respect to protecting construction workers, the substitute bill would place all construction workers under the protection of the "Construction Safety Act" (Public Law 91-54). Therefore, the substitute bill expressly provides that the Occupational Safety and Health Act would not apply to employers in construction work. The substitute bill would also amend Public Law 91-54 to provide that all construction workers would come under the protection of standards developed by the Secretary of Labor under the procedures of Public Law 91-54.

The substitute bill amends Public Law 91-54 to permit the Secretary of Labor to bring cases of alleged violations of construction safety and health standards before the Occupational Safety and Health Appeals Commission, created under the Commission's orders would be enforced in the same way they are enforced under the Occupational Safety and Health Act.

The additional sanctions of contract debarment and cancellation now provided for under the "Construction Safety Act" would remain. (see: 25).

X. Relationship to other Federal programs

Makes the Act inapplicable to working conditions of employees with respect to which any Federal agency other than the Secretary of Labor exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health (see 4(b)(1)).

X. Relationship to other Federal programs

Essentially the same, except added to "Federal agency" are "State agencies acting under section 274 of the Atomic Energy Act of 1954 . . ."

Assures confidentiality of trade secrets. (sec. 13).

XII. Variations, tolerances and exemptions

Variations, tolerances and exemptions from the Act's provisions may be granted by the Secretary in order to avoid "serious impairment of the national defense." (sec. 15).

XIII. Federal-State relationship

(a) Where no Federal standards exist, State standards would apply and be enforced.

(b) *State Plans*, States which desire to set their own standards, in order to replace Federal ones, may submit a plan to the Secretary of Labor. If approved by him, the State standard and its enforcement by the State would control. However, the Secretary may apply the Federal law in whole or in part in the plan-approved State until he determines, not later than 3 years after the initial approval, that the plan is operating effectively. But in no event is the Secretary precluded from making inspections at any time to evaluate a State's operations under its plan. (sec. 16).

(c) *Judicial Review of State Plans* may be obtained in the United States Court of Appeals in the circuit in which the State is located of the Secretary of Labor's decision to reject or withdraw approval of a State plan. Court's test would be whether the Secretary's action was arbitrary or capricious. (sec. 16(g)).

XIV. Federal employee safety

Provides safety and health programs to be established by agency heads; programs will be consistent with standards developed under the Act. Consultation with employee representatives is required. (sec. 17).

Has essentially comparable provisions. (sec. 15).

XII. Variations, tolerances and exemptions

Same. (sec. 16).

XIII. Federal-State relationship

(a) Same.

(b) *State Plans*, same. (sec. 18).

(c) Same, (sec. 18(g)).

XIV. Federal employee safety

Same, (sec. 19).

(1) Research, employee training, safety health personnel education, and grants to the States

Provides that the HEW Secretary (1) conduct research (directly or by grants or contracts) in the field of occupational safety and health; (2) provide criteria to assist Secretary of Labor in developing standards; (3) issue regulations requiring employers to measure record and make reports on the exposure of employees to substances which the HEW Secretary believes to be dangerous; (4) set up programs of medical examination and tests; (5) publish lists of toxic substances; (6) make industrywide studies of matters of health in the workplace; and (7) set up educational programs for safety and health personnel. Provide that Labor Secretary (1) set up short term training for safety health personnel; (2) set up educational programs for employers and employees concerning how to avoid accidents, etc.; and (3) to make planning grants to the States (40% Federal participation) and program grants (50% Federal participation).

XVI. Economic assistance to small businesses

Would amend the Small Business Act to permit loans to small businesses as necessary and appropriate to assist them in meeting certain costs resulting from the enactment of the Occupational Safety and Health Act (sec. 24).

XVII. Statistics

Has provisions similar to substitute bill (sec. 20).

XV. Research, employee training, safety health personnel education, and grants to the States

Essentially the same, but with some differences, i.e., the substitute bill *does not have any express provisions* under which an employer could be required to measure exposure to toxic substances. Instead, the substitute bill has a provision (sec. 9(b)) authorizing funds to enable the Secretary of Labor to purchase equipment which he deems necessary to measure exposure of employees to working conditions involving ill effects from exposure to toxic substances. Also, the substitute bill does not expressly provide for medical examination, but these could be provided for in standards issued by the Labor Secretary in consultation with the HEW Secretary. In short, the major difference between the research provisions in the reported bill and those in the substitute bill is that the reported bill spells out in detail what could be included in the standards administratively developed by the Board.

XVI. Economic assistance to small businesses

Same (sec. 22).

XVII. Statistics

Contains a separate section to set up a full statistical program in response to one of the greatest needs in the field of occupational safety and health; that is, the lack of adequate statistical data to gain a clear picture of the nature and extent of job hazards. Program would include grants to the States; and the Federal share may be up to 50% of a State's total program cost (sec. 24).

XVIII. Observance of religious beliefs

Essentially the same as substitute bill. (sec. 18(a) (3)).

Provides that the Act shall not be deemed to authorize or require medical examination, immunization, or treatment for those who object on religious grounds, except where such medical procedures are necessary for the protection of the health or safety of others.

XIX. National Institute For Occupational Safety and Health

To carry out the HEW Secretary's responsibilities under the research section, the reported bill sets up a National Institute for Occupational Safety and Health within the HEW Department. The HEW Secretary appoints the Institute's Director who serves a 6-year term.

XIX. National Institute For Occupational Safety and Health

No provision.

XX. National Commission on State Workmen's Compensation Laws

Sets up a temporary National Commission to study the subject of workmen's compensation in all its facets and problems. The Commission will make a report to the President and thereafter cease to exist.

XX. National Commission on State Workmen's Compensation Laws

No provision.

X XI. Appropriation

Such sums as may be necessary.

Same.

X XI. Appropriation

XXII. Additional Assistant Secretary of Labor

Provides for an additional Assistant Secretary of Labor for Occupational Safety and Health.

XXII. Additional Assistant Secretary of Labor

No provision.

XXIII. Effective date

First day of the first month which begins more than 30 days after date of enactment.

XXIII. Effective date

120 days after enactment.

IN THE SENATE

[From the Congressional Record, Oct. 13, 1970]

NOTICE OF INTENTION TO CALL UP PROPOSED OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Mr. MANSFIELD. Mr. President, if I may have the attention of the distinguished acting minority leader and the Senate, I think I should state that it is my intention, at an appropriate time this afternoon, to ask unanimous consent and, if need be, to move that the Senate proceed to the consideration of Calendar No. 1300, S. 2193, a bill to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for men and women, and so forth.

In this connection, I was approached by Members of the Republican side of the aisle early last week with the request that this particular proposal not be brought up last week but be put over until Monday of this week.

On returning from Montana, I find that objections have been entered, and I am disappointed and disturbed because I thought at least we had a tacit understanding to accommodate two Senators who were vitally interested in the proposal and who were not here on Thursday and Friday last, and as an accommodation to them, not thinking there would be any objection on yesterday, it was agreed to put it over until Monday. I find, on reading the Record, that objection has been raised. So I want to assure the distinguished acting minority leader and the Senate that it is my intention to try to bring it up this afternoon in one form or another because, in some way, somehow, the Senate will have to face up to this matter.

Mr. GRIFFIN. Mr. President, I appreciate the notice given by the distinguished majority leader concerning his intention so that it will be possible to contact those Senators who are keenly interested, some of whom unfortunately are not in the city today, and alert them. As I am sure the distinguished majority leader realizes, there are absent Senators on both sides of the aisle who are deeply and keenly interested in this legislation, some are for certain provisions and some are against them. To call the bill up at this point in the session presents a difficult and complex problem for many Senators. I appreciate the concern of the distinguished majority leader. I think he is justified in his reaction to the action on Monday, particularly since he made an adjustment last week to accommodate certain Senators I understand and I can appreciate his attitude today.

Mr. MANSFIELD. Mr. President, I appreciate the comments of the distinguished acting minority leader. However, it seems that we will be faced with a lot of problems like the one just enunciated—for example, the conference report on the farm bill. There will be Senators, I am sure, who will be absent and may delay the consideration of that bill. However, I personally would like to see it brought up. But if

there are Senators in positions of significance and importance on this particular bill, the Senate will have to be prepared for any eventuality which may occur, regardless of how the majority leader personally feels on this matter.

I would, of course, hope that before we go out, we would be able to take up the appropriations for military construction for the Department of Defense. That is on the calendar. It is an important bill. I would hope that we would be able to clear the calendar as much as possible.

The way we are dillydallying and delaying and holding back and stalling, I do not know what we will do before we go out, let alone what we will do when we come back. We have a lot of business on the calendar. It is a heavy workload. There has been too much stalling and too much delay.

I hope that the Senate, regardless of individual campaigns, will face up to its responsibility and that Senators will be in attendance today and tomorrow so that the business of the Senate and of the Nation can be conducted as expeditiously as possible and, in that way, be disposed of one way or the other.

MR. GRIFFIN. Mr. President, I am glad that the majority leader did not overlook in his comments the conference report on the farm bill.

The occupational health and safety bill is very important, and should be acted upon. It is equally important to the Nation as a whole that we take action on the farm legislation.

I was disappointed, as I know many other Senators were, when there was an indication that the conference report on the farm bill will not be taken up after the recess. Like the majority leader, I would hope that we could take action on both the farm bill and the occupational health and safety bill before the recess.

MR. MANFIELD. Mr. President, I want to assure the acting minority leader that the majority leader will do his very best to clear the calendar and dispose of as many of the conference reports as possible.

Unfortunately, situations arise which create difficulty. I must express my disappointment, for example, that the House has taken so long to face up to its consideration of the conference report on the farm bill. If I remember correctly, it was agreed to last Tuesday or Wednesday and is only being taken up in that body today.

We have a lot of things to consider—objections of individual Senators, the possibility that we may or may not have a quorum tomorrow. All things have to be taken into account to understand the situation which confronts the joint leadership at this time.

MR. GRIFFIN. Mr. President, if the majority leader would permit an observation and then a request, it is my understanding that under the unanimous consent agreement entered into yesterday, there is only, as I recall, 10 minutes to a side available for debate on the proposed Eryn amendment to the equal rights amendment.

THE ACTING PRESIDENT pro tempore. There is 5 minutes to the side on that amendment.

MR. GRIFFIN. Mr. President, I am glad that the Senator from Indiana (Mr. Bayh) is on the floor—particularly in the light of a letter of his signature circulated this morning to Senators; a letter which includes the sentence: "Under the equal rights amendments, without any additional language, women would not be subject to the draft."

Since all of the legislative history, including the reports on this

proposal issued by the Subcommittee on Constitutional Amendments, of which the distinguished Senator from Indiana is the chairman, contradict that statement, I would like to make a unanimous-consent request.

Before doing so, let me quote from a report dated December 16, 1969, issued by the subcommittee chaired by the Senator from Indiana, referring to affects of the equal rights amendment, if adopted. The report said: "It could be expected that women will be equally subject to military conscription."

In view of the contradictory letter circulated this morning, I believe some time is needed to discuss this point. After conferring with the sponsor of the amendment, the distinguished Senator from North Carolina. I ask that there be at least 15 minutes allotted to the side for discussion of this very important amendment.

Mr. ERVIN. Mr. President, I was under the impression that there was 10 minutes to the side.

Mr. GRIFFIN. There is only 5 minutes to a side.

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OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside and that the Senate turn to the consideration of Calendar No. 1300, S. 2193, and that it be made the pending business.

Several Senators addressed the Chair.

Mr. RUSSELL. Mr. President, may we please have order?

The PRESIDING OFFICER. The Senate will be in order. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes.

Mr. MANSFIELD. Mr. President, if I may, in moving that the pending business be laid aside temporarily, I ask that it remain in that status until the conclusion of the morning business tomorrow.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

Mr. DOMINICK. Mr. President, I would like to make sure what the situation is. Do I understand that the Senator is asking for unanimous consent on this request?

Mr. MANSFIELD. The Senator is correct.

Mr. DOMINICK. I object.

Mr. MANSFIELD. Mr. President, I move that the Senate turn to the consideration of Calendar No. 1300, S. 2193, that it be laid before the Senate and made the pending business.

The PRESIDING OFFICER. The bill will be reported.

The assistant legislative clerk read as follows:

A bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information,

education, and training in the field of occupational safety and health; and for other purposes.

THE PRESIDING OFFICER. The question is on agreeing to the motion to proceed to the consideration of the bill.

The Senator from New York is recognized.

MR. JAVITS. Mr. President, a parliamentary inquiry.

THE PRESIDING OFFICER. The Senator will state it.

MR. JAVITS. Mr. President, am I correct in assuming that the motion is debatable?

THE PRESIDING OFFICER. The motion is debatable.

MR. JAVITS. Mr. President, I would like to be recognized, if I may, for a moment. Will the Senator from Montana yield to me?

MR. MANSFIELD. I yield the floor.

THE PRESIDING OFFICER. The Senate will be in order. Senators and staff members will take their seats.

MR. JAVITS. Mr. President, I am the ranking minority member of the committee. I have labored long and hard with the Senator from New Jersey (Mr. Williams), the Senator from Colorado (Mr. Dominick), the Senator from Ohio (Mr. Saxton), the Senator from Pennsylvania (Mr. Schweiker), and many other Senators on this bill.

Mr. President, I have been very deeply interested in the bill. It is an extremely important measure. It covers almost all the workmen of the country. It is a landmark piece of legislation; it contains many fine provisions. Undoubtedly it will become law, whatever may happen to it today.

There has been a very unfortunate connotation placed upon the matter of whether the bill should be brought up at this time so that it could be considered before tomorrow night. It has been alleged that some Senators are trying to stall it off.

I do not think that is fair. There is a difference between the labor and management point of view. Management seems to feel very strongly that the procedure outlined by the administration—and I authored the administration's original bill; so I ought to know about it—to wit, a procedure for a Board to set standards and a Commission to deal with enforcement is the more intelligent way to proceed. On the other hand, the point of view of organized labor is that the Secretary of Labor should perform both functions.

Mr. President, in the dispute which has arisen over certain provisions of this bill there has been a complete failure to recognize the potentiality of the bill and the fact that it is generally an excellent bill and contains some very important safeguards. However, there is a great deal of difference of opinion on certain matters. Although I have my views—and I tried to work them out on the committee—I think there is some substance to the disagreement. But the fundamental point is that the bill is extremely important and extremely desirable for all the workers.

I doubt very much that the bill could be finished in the 24 or 36 hours we have remaining. The Senator from Colorado (Mr. Dominick)—whether he does so by a substitute or by amendment—he has some 12 amendments, I understand. Every one of them is substantive and is not a farce or an effort to delay the matter.

However, Mr. President, I hope the Senate will proceed to the consideration of the bill. At the very least, if we cannot finish it by tomorrow night, it will be the pending business when we return.

We can pass the bill, and it should be passed. It is a critically important piece of legislation.

I hope that Senators will not be confused and believe that the amendments represent management-labor differences. In all honesty, most of them do not.

The bill should be passed.

Mr. President, I think it is important and fair to rebut any idea that any Senators have sought to stall the bill and not come to grips with it. The idea that this should be challenged and debated and that it should have the deliberate consideration of the Senate is only fair.

Mr. President, the bill has not been acted on in the other body. It obviously will not be. So, there is no prejudice to the American workingman if it is considered by the Senate after the recess.

Efforts will be made to amend the bill. I will oppose most of them.

I hope very much that the Senate will vote to consider the bill.

The PRESIDING OFFICER (Mr. Case). The question is on agreeing to the motion of the Senator from Montana.

Mr. DOMINICK. Mr. President, I have listened with great interest to the comments made by the distinguished Senator from New York. We are really being asked to consider an extremely important bill, important to the unions, to the working men, and also to the country as a whole, because it affects every business in the country. We are being asked to do this in the closing days of this session before recess when we have before us not only this bill, but also the military construction authorization conference report, an agricultural bill, and very likely other bills, all of which are of enormous importance to the country.

We have, as far as this bill is concerned, a number of amendments which will be offered by different members of the committee, which will require votes. We have a substitute which I have introduced, but not authored, which takes a different approach to the problem and which I think is a far more equitable approach than the approach of the committee reported bill.

It seems to me, with all these really important factors, consideration of the bill at this time will be a pretty bad mistake.

I know that there are Members on our side and on the other side of the aisle that feel the same way. That was why objection was made to the unanimous-consent request that had been propounded on two other occasions.

I certainly do not want to be in a position where we are being held up to the world as though we are against occupational health and safety. That would be a pretty dumb position to take. I do not think that any of us are that dumb.

We are trying to deal with an enormous problem in our country.

The bill covers every business affecting commerce in the entire United States, ranging anywhere from a big steel company to a shoeshine shop.

I think it would be a mistake on such an important bill, affecting commerce as it does, to try to bring it up no more than 24 hours before we adjourn to go home for the recess, when we know that the House is not going to act on it at all before the recess.

I suppose that the motion having been made the leadership probably is not going to want to withdraw it, but I feel we are not approaching

this in a proper way or with the proper opportunity to consider the bill. The report on the bill has been out about 1 week. I wish to ask the Senator from New Jersey if that is correct?

Mr. WILLIAMS of New Jersey. The Senator is correct.

Mr. DOMINICK. We have also been engaged in an enormous amount of other business in the meantime so that the concentration of Senators has not been on this matter up to this point.

I am not going to take a negative position on bringing it up if the leadership insists it should be done. Obviously it is for them to determine what is before the Senate. It is not for me to say, but rather it is for the leadership to say.

I think in presenting these arguments we have many amendments and an entire substitute for the bill. There is no doubt in my mind that if anyone wanted to follow that course, this matter could go over until after the recess, probably without ever coming to a vote. I have indicated from time to time that I am willing to vote on a substitute, but I have been told there will be many clarifying amendments to the original bill and many clarifying amendments to the substitute, and the chances of getting unanimous consent to have a vote on the substitute on an up and down basis is not likely.

Under those circumstances it seems to me we are kind of exercising a lot of lung power without getting anywhere, when we could put this over until after the recess when Senators will have had a chance to read the bill and study it in the interests of the working man and the rest of the country.

Mr. WILLIAMS of New Jersey. Mr. President, it should be pointed out that the Occupational Health and Safety Act has been introduced and has been before the Senate for well over a year. The urgency of considering this vital measure has certainly been highlighted by the President. This legislation is on the list that is considered to contain matters of greatest importance to the administration.

Of course, there are differences among some of us as to one detail—and many details have been worked out in long committee sessions—in that we have not worked out accommodation with the administration. The President indicated in his last message, which was about 5 weeks ago, that this bill, this entire legislative package dealing with occupational health and safety in an area where accidents are mounting and disease is mounting, is vital to the country. As the President said, we are three generations overdue in enacting this measure.

Rather than coming to us in haste, this measure has been before us a long time. The committee has labored long and productively in bringing this bill to the floor of the Senate today, with this motion to take up the matter.

Mr. JAVITS. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. WILLIAMS of New Jersey. I yield.

PRIVILEGE OF THE FLOOR

Mr. JAVITS. Mr. President, I ask unanimous consent that the minority counsel of the committee, Eugene Mittelman, be admitted to the Chamber.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS of New Jersey. Mr. President, I yield to the Senator from Minnesota.

Mr. MONDALE. Mr. President, I do not wish to delay the Senate but I strongly endorse the observation made by the distinguished Senator from New Jersey in support of the motion of the majority leader to take up the occupational health and safety bill. I know of no other measure which has been more carefully analyzed by the Committee on Labor and Public Welfare and the subcommittee, than this measure. We have understood the serious and profound necessity of having reforms in the field of occupational health and safety.

I remind Senators that it is estimated that 55 workers die every day because of the failure to have adequate occupational health and safety legislation; that 14,000 Americans lose their lives every year because of the failure to have the kind of legislation we should take up today; and that 2.5 million workers suffer serious and permanent disability because of the failure to have this kind of legislation.

We have worked long and hard on this matter. I do not think there is any measure before this body that is anywhere near as important or which rates a higher priority than this legislation. I believe the Senate has a duty after these months of efforts, exhaustive hearings, and long and fully exploratory executive sessions, and after this measure has been pending before the full Senate for several days, to bring up this matter, act on it, and do justice to American workers.

We can act on this measure and we should. To delay would be regarded as failure by this body to deal with one of the most heart-breaking and compelling issues of our times.

I cannot too strongly speak in support of the majority leader's motion.

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OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

The PRESIDING OFFICER. The question is on the motion of the majority leader.

Is there further discussion?

Mr. SAXBE. Mr. President, I am not in support of the motion to take this measure up at this time. I am in sympathy with the purposes of the bill, and I know that the administration is interested in getting a health and safety bill.

I personally, at the beginning, questioned whether we were not taking the States a little bit fast in moving into this area. But I have been convinced that it is necessary that we move into this area and give the States a relief valve so that they can move back into it if they will set up a comprehensive health and safety program.

I do not suppose there is a Member of this body who has visited more industrial plants than I have, and I am quite aware that there is a serious health and safety problem. I am also quite aware that the breathing of dust, not only from coal but from asbestos, and breathing noxious fumes in many of our plants lead to a far greater number of incapacitated workers than we have ever reported or have believed in the past.

In this bill there is, for the first time, an effort to study the various and differing workmen's compensation laws of the several States, to see if they provide adequate benefits, because at the present time many States have very good benefits, and others have deplorable

benefits, where an accident at work literally puts the family on relief or at least makes it a public charge at some time in the future.

Well, then, why question bringing it up at this time? I think the best answer is the last vote. We had 70 Members of the Senate here. I do not suppose there is one measure that has come before the Senate that has a greater effect upon the entire assembly of States than this bill. It is a very significant bill and a very far-reaching bill. It extends the Federal Government, through the Department of Labor, into every factory, every plant, every place of employment in the United States.

With 70 Senators here, I think we are avoiding the discussion that should evolve on the bill.

I am quick to point out areas where I question this bill. For one thing, at the present time the bill requires that the Secretary of Labor—with the advisory groups, that is true, but the Secretary of Labor has the prime responsibility—to set safety standards. These standards, once set, will be enforced by whom? The Secretary of Labor. If a violation is found in a plant and a complaint is made, to whom do they go? The Secretary of Labor. And if the plant needs to be closed, there is a provision for a court procedure, but there is also a relief valve providing that the Secretary of Labor can close the plant if it is an emergency.

A number of us feel a disinterested group should be set up to establish the standards that will operate under this bill; that the Secretary of Labor then take those standards and be the enforcing officer; that he hire the many inspectors involved—and I do not believe the difficulty of acquiring those inspectors, in the number needed, has been discussed—and that then there be a panel to hear alleged violations. Following that, if there is an emergency, the inspector, together with the regional supervisor or the Department of Labor, through the Secretary, immediately go into Federal court and seek injunctive relief.

We are prepared to offer amendments. I am quite familiar with the Steiger bill, which is the so-called compromise version of the Daniels' bill before it came out of committee. Something happened so that it did not come out. I know there is a suggestion that it be offered as a substitute bill.

I, for one, would rather see the individual amendments come up. Although I would vote, as a last resort, for a substitute bill, the so-called Steiger bill, which is available and will be submitted, I would prefer to go through this bill with the corrective amendments which I believe would make it a better bill, not only for the employees of this country, who are the real movers in this effort, but also, through these measures, to give the employer, the man who provides the working place, an opportunity to have his day in court. No one has talked about that.

Any bill of this nature must be a balanced bill. We cannot just have a bill set up for the employee and not worry about the employer, because someone has to provide the job.

The biggest complaint that I have about this bill on its face is that it would make it appear that the employer is not interested in safety, that the employer is an exploiter who is squeezing the last dime out of this employee and this plant, and is not concerned about safety.

We all know that is not true. We know that the employer who has a poor safety record has more troubles than the one with a good safety record, and the bigger the employer, the more emphasis is put on safety. In fact, if there is any safety for employees today, it is with the larger corporation, where safety is given the prime attention.

For example, I know of one steel plant in my State where a safety meeting is held every morning at 8 o'clock by a committee of the union, the safety inspectors, and the management; and it is not just a man appointed for the job, it is rather the plant managers who attend this meeting. If a man has so much as a mashed thumb or a rash that could have arisen from some chemical with which he came in contact, or if there is any apparent source of injury, it is brought up, discussed, and dealt with immediately. Any small injury is taken up and covered in these safety meetings.

So I know that safety is given prime attention. But I am also aware that there are so-called alley shops, there are marginal shops—and I have been in them—where heavy, dangerous, and unguarded equipment is used. I know there are elevators and there are various cement plants and building materials plants where employees breathe air that is polluted by the dust or fumes of the operation, and I know such situations do need attention.

But I also submit that when safety is used as a tool to move in on an employer, or is set up in such a way that it could be used for harassment, then it should be identified for just what it is. I think there is a danger that this present bill could be utilized in that manner. I think it can easily be amended so that those dangers could be removed.

We have seen great industrial nations which have lost their ability to compete. By that I do not mean to indicate, in connection with this bill, that we have to have a dangerous operation or an unsafe operation to compete. But I do know that in the competitive world of business today, we should not attach to safety unnecessary or harassing measures that would, in effect, limit production in areas that are not necessarily going to increase safety.

Mr. YARBOROUGH. Mr. President, will the distinguished Senator yield to me for a unanimous-consent request, without losing his right to the floor?

Mr. SAXBE. I yield.

Mr. YARBOROUGH. Mr. President, I ask unanimous consent that Mr. Robert Harris, who is the staff director of the Committee on Labor and Public Welfare and has worked extensively on this bill, be permitted to be present in the Chamber while the measure is under debate.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. SAXBE. I have talked with a Member of the Senate who was in business in England, for example. About 12 years ago, they adopted a number of safety bills that were very idealistic in their concept, but so restraining to the place of work and so restraining on the assignment of employees that they served not to make the plant safer and to increase production, but rather to make the business less competitive, and, as a result, it lost business to German manufacturers producing the same item.

This is something that we must be objective about. We want ideal and safe working conditions. At the same time, we must have one

eye on this and the other eye on permitting the manufacturer to be competitive, not at the expense of the workmen, but rather in a cooperative effort.

In my State of Ohio, the most successful safety plans and the most successful plans for spreading safety-minded people throughout the plant have been where it has been done by cooperation. I hope that we will not destroy this attitude of cooperation. I think that by moving so vigorously into this area with this bill, we are going to surprise a lot of people.

If we act here on a Tuesday afternoon, when everyone knows that we are going to adjourn on Wednesday, and I daresay by tomorrow morning at 8 o'clock we will not have a quorum, I do not believe that people are going to be sufficiently aware of the intent of this attempt to pass this bill, to properly contact and talk to their Senators, and as a result, the matter is not going to get the full consideration that it should receive.

MR. DOMINICK. Mr. President, will the Senator yield?

MR. SAXBE. I yield.

MR. DOMINICK. I have been listening to the Senator's discussion, and I think he has done an excellent job. I have also listened to the discussion of the Senator from Minnesota, which is why I asked if the Senator would yield while he is still present in the Chamber.

I do not think anyone ought to be under the impression, nor should the record imply, from the Senator's remarks or mine, or those of the Senator from New York (Mr. Javits), the conclusion that we are against an occupational health and safety bill.

Thus is the impression I more or less understood that the Senator from Minnesota would try to give when he made his comments, because he talked about the urgent need for this legislation, but he knows as well as I do that the House of Representatives is not going to take it up now, so nothing will happen until the end of November.

MR. MONDALL. Mr. President, will the Senator yield?

MR. DOMINICK. The Senator from Ohio has the floor.

MR. SAXBE. I yield to the Senator from Minnesota.

MR. MONDALL. I do not underestimate the controversial nature of this proposal. It is a fundamental, basic attempt to deal with one of the Nation's greatest problems, occupational hazards, which annually cause some 14,000 deaths and some 2.5 million permanently injured Americans. All I am saying is that I think we ought to just take it up, go to work on it, and give it the debate and the consideration that it deserves, and we ought to be mindful—I am not saying any Senator is not but we ought to be mindful of the fact that each day's delay will cost lives. I do not say anything more than that I wish this legislation had been adopted 30 years ago.

I am not saying any more than that, and I do not see why we cannot lay it before the Senate and take it up. I see it as a very important proposal. I do not recall any proposal this year in Congress, at least before the Senate Labor Committee, which was more thoroughly considered than was this one. It has been before the Senate now a week, which is not an inconsiderable period, as most legislation goes. We have had plenty of time to consider the record and the amendments. Most of the amendments that are going to be considered were thoroughly considered before the committee, and I feel very strongly that now is the time for the Senate to stand up and act on this matter, and that is all I intended to say.

Mr. SAXBE. I can only say this: I recognize that perhaps we should go ahead. But what I am saying is that if we do this, we are not going to get out of here tomorrow night. We have frittered away 4 months this summer on two bills, and here is one that has an impact on everybody in this country who employs anybody, and it is suggested that we bring it up on the last day, in the afternoon, and that we have to do it before we go home on Wednesday. The wheels came off some place, because this is not the concept.

I should like to read an editorial published in the Washington Post of October 3:

You would not expect even the most callous doctors to fritter away time arguing over the best way to save a dying patient while the blood drains from his veins. Yet politicians and labor lobbies are doing just that in the case of the crucial job safety bill. Each year, by low estimate, 14,500 Americans are killed by work-related accidents; 2.2 million are disabled. No politician or labor leader would ever say that he favors death and injuries among the nation's 80 million workers. Yet the calling and pettiness of a few of them say exactly that. Far from the scenes of gore that are loudly decried, it appears that the parties in the dispute are so deadlocked that the legislation may not pass at all.

The position of the AFL-CIO, which does not even have an industrial safety department, is mulishly firm; unless the Secretary of Labor has final power to set and enforce safety standards, then no law should be passed. The House and Senate bills—proposed by Rep. Daniels and Sen. Harrison Williams—are largely agreeable to the AFL-CIO. But compromise legislation was devised to gain Republican support. It would empower an independent board to set and enforce standards, rather than the Labor Department. For the workers, the compromise meant a hope that the killing and maiming would be decreased. What does it matter if the standards are set and enforced by the Labor Department or by a President-appointed board?

The AFL-CIO, always touchy when its power seems remotely threatened, knows it could more easily pressure the Labor Department than the board. To its credit, the Nixon administration has been flexible and fair in accepting compromises. The high hopes of Democrats and Republicans in getting out a bill, however, are now blocked by the AFL-CIO, the one group that should be most concerned about worker safety.

It is another story for another time as to why the AFL-CIO can tie up the United States Congress in this manner. Perhaps it is asking to much, but nothing would help more than for the involved Democrats to politely tell the AFL-CIO to stick to running the unions, not the Congress.

When we dig through the many reasons why this matter is hung up here, on who is going to be the rule-setting board and whether people are going to be covered by a National Occupational Health and Safety board, I think this is the basic reason, and I deplore it.

How much has politics to do with this? Some Senators on both sides of the aisle are candidates and want to vote for it or against it. That is the only reason why we are here late in the afternoon, without proper time to consider this matter; and I do not think it is unreasonable to disclose that, as to why we are. Some want to vote; some would rather not. They think it is going to help their chances to vote.

I am not a candidate, but I do say that to take this matter up with less than 70 Senators in the Senate—because two have left, that I know of, since the last vote—this monumental job of moving into the industrial safety field, is not advisable, and I just will not go along with it.

If we want to start on the 20 amendments I am prepared to offer, suppose we can get on with it. But I certainly am not going to join any unanimous-consent request for a shortcut on this bill.

PRIVILEGE OF THE FLOOR

MR. YARBOROUGH. Mr. President, I ask unanimous consent that Boe Martin, counsel for the Committee on Labor and Public Welfare, may have the privilege of the floor during the discussion of this matter.

THE PRESIDING OFFICER. Without objection, it is so ordered.

MR. YARBOROUGH. Mr. President, this is no rush-through job. This is no eleventh hour speedup. The Occupational Health and Safety bill has been before Congress for at least 4 years. In the 90th Congress, I introduced the bill as chairman of the labor subcommittee. I introduced the health and safety bill that had the strong support of the Secretary of Labor, Willard Wirtz. We held hearings, but we had slowdowns. We have heard of labor slowdowns. Labor does not know how to slow down things compared with the slowdown performed on the health and safety bill to protect labor from the crushing rate of 7 million people injured in industry every year.

As the distinguished Senator from Minnesota has pointed out, 2,200,000 people are disabled for long periods of time. Seven million are injured, and some 14,500 die.

We hear of strikes, and we have rushed through, in my years on the labor committee, bill after bill because it was said a strike was going to wreck the economy of this country. Ten times more man-days of work are lost in this country every year by industrial accidents and deaths than by all strikes, lockouts, and wildcat strikes combined.

We have no national safety standards in industry. This is a shocking thing. The greatest industrial Nation on earth is so callous that it has no safety standards in its industry. We have limited ones. We have a mine safety bill, we have a longshoremen's safety bill, and we have certain safety bills for products manufactured for use by the Federal Government; but generally in industry, where most of the accident occur—and they are heaviest in the building trades—there is no Federal safety legislation.

We passed a limited act this year for construction workers applicable to Federal or a federally related project. But that was miniscule. This bill is designed to be fair to all employers, to set an overall standard. Some employers want to put safety devices in their plants. But some who can get a few more production hours by not having a safety device on a machine are not doing it. Some have done it.

The National Safety Council has supported legislation such as this for years, and they have talked some employers—a few large companies in this country—into putting safety devices in their plants. Those few companies have saved enough money because of the decrease in injuries to keep their best trained workmen working and have saved enough on workmen's compensation premiums to pay for the safety devices.

Unfortunately a vast number of employers in this country of 50 States, stretching so wide to the east and the west that the sun never sets on the United States, cannot come to that voluntarily. So it becomes necessary for the Government to set a uniform standard applicable alike to every employer in every State, making it fair and even. Of course, it will cost a little more per item to produce a washing machine. Those of us who use washing machines will pay for the increased cost, but it is worth it, to stop the terrible death and injury rate in this country.

While I was the principal author of this legislation in the 90th Congress as chairman of the labor subcommittee, when I became chairman of the full committee this year, the Senator from New Jersey (Mr. Williams) as my successor as chairman of the labor subcommittee has taken over and so ably handled the matter. He is the principal author and I am one of the six cosponsors with him. The full labor committee carefully considered this bill. There was executive session after executive session of the full Committee on Labor and Public Welfare.

Mr. President, there are many amendments to the bill offered and agreed to by Members of both parties. It is not a one-man bill or a six-man bill. It was entirely lined out there on the first 13 pages, and then the substitute was adopted, so that it runs twice as long as the first original copy because of the new amendments.

The Senator from New York (Mr. Javits) offered many amendments and I think many of them were good amendments. Many other amendments were adopted to clarify procedural points and to provide for notice of hearings, and so forth, so that we could be as fair as possible to all employers.

Mr. MONDALE. Mr. President, will the Senator from Texas yield?

Mr. YARBOROUGH. I yield.

Mr. MONDALE. The point was made earlier about how this was a one-minded, arbitrary, labor-dominated, bludgeoning bill; but I note in the Senate report, the views on pages 57, 58, and 59, there is pointed out in great detail many of the wonderful changes which have been wrought by amendments which were offered by the Senator from New York (Mr. Javits), which make this a fine bill, as well as by the Senator from Colorado (Mr. Dominick), and the Senator from Ohio (Mr. Saxbe). Amendment after amendment that was proposed by them was accepted by the committee in order to make this a better bill.

I have never attended an executive session of a committee where I recall more amendments were adopted than to this bill.

Mr. YARBOROUGH. Mr. President, whoever wrote that statement in the Washington Post referred to by the Senator from Ohio (Mr. Saxbe) just did not know what went on. It was an entirely inaccurate report. I am shocked to find such a great inaccuracy in a statement published in one of the great newspapers of this country.

This is certainly not a one-man bill. While I am proud to be a coauthor of it, many more Senators have contributed to it with more amendments and not language, Senators whose names are not on the bill. As the Senator from Minnesota has just pointed out, they have placed in the report their contributions and have bragged about it and I think they were good amendments and this is a better bill as a result of them. This is not a one-man or a one-party bill. The bill came out of committee, as I recall it, with only two dissenting votes. I may be in error on that and I shall check the record and if I am, I shall be glad to correct it. But it was an overwhelming vote. I shall not state who they were. But out of the 17 members of the committee, 15 voted for the bill. Thus, it was a bill that was brought out of committee with a majority of both parties and they are entitled to great credit for it.

The bill has waited for too many years. We have now come up with an end result which is good, after a great deal of work on it. But now that we get it off the ground, so to speak, because it is a big bill, it

gets slowed down. But, there are 80 million American workers out there, many of whom are being killed and injured without the protection which this bill would give them.

Of course, many States have safety laws, and they are good ones, but the only way to be fair, as interstate as our commerce is in America, is that there must be equal protection of the law and equal rights. We must have the same standards for all.

As has been pointed out, on page 57 of the report, the contributions are outlined there, especially by the Senator from New York (Mr. Javits) and others—more Members contributed amendments and modifications. All through here it is clear that this was an effort to write many good contributions into the bill by the 17 members of the committee.

This committee was a working committee. I am very proud that I have had the privilege of serving as chairman of the subcommittee, because it is a working committee. It is not a committee where two or three members write the legislation and then, after obtaining a quorum vote it out. This was a working committee. All its members are workers. I am proud that the newer members also put in time and effort on it.

Mr. President, I shall not read the Washington Post editorial, for I do not wish to take up the further time of the Senate, but on page 18 of the Washington Post for Monday, October 12, 1970, the letter to the editor entitled "AFL-CIO Replies to 'Stalling on Job Safety'" so completely refutes the erroneous statements made not just by the Senator from Ohio as he merely read what the Washington Post said, but it refutes the errors that the Washington Post made.

The Washington Post was fair enough to print the letter to the editor in a three-column spread. It did not try to hide its error. At this point, since the Senate is only debating the motion to take up, I shall not take up the time of the Senate further, but ask unanimous consent to have the letter printed in the Record.

There being no objection, the letter was ordered to be printed in the Record as follows:

AFL-CIO REPLIES TO "STALLING ON JOB SAFETY"

(By Jacob Clayman)

WASHINGTON — Your editorial of Oct. 3, "Stalling on Job Safety," does little credit to your fine newspaper. You mercilessly castigates the AFL-CIO for refusing to accept the administration's occupational safety and health proposals and dared suggest that this is being done because unions feel their "power . . . threatened."

This is about the most derogatory nonsense to which I would not normally respond except that you do undoubtedly, though I am sure unwittingly, harm to millions of workers in America's shops and factories who are victims of death, injury and disease on the job. Those industrial巨人们 which have always fought against any interference of state or federal legislation to protect life, limb and health of American workers and undoubtedly hail your editorial with unrestrained glee. They are not used to receiving such a blowback from your paper.

What we have tried for years is to get the best possible bill to preserve life and health on the job. The administration has aimed for a *de minimus* bill, for the least common denominator with which they might get by politically, but with life and health of millions of workers at stake this is not enough.

Since some of your articles have cited Ralph Nader, I would like to quote to you what Mr. Nader had to say about the administration bill when he testified before the Senate Subcommittee on Labor on Dec. 15, 1969:

"I think it would be extremely facile to take the administration bill S. 2736, and break it down provision by provision and show what an utter fraud it is . . ."

Mr. Nader further said to that subcommittee:

"I would not want any bill like S. 2788 to pass. It would be worse than no legislation at all."

The so-called "compromise" legislation which you so heartily approve is a slight improvement over the administration bill but still no more than a warmed over version of the administration's proposals in S. 2788.

The employers and the administration are united in demanding that occupational safety and health codes shall be promulgated by an independent board and enforced by an independent panel. We have rejected this approach because all the experience in recent years with independent boards and commissions tells us that such boards are lacking in clear, quick and positive action; diffuse and confuse responsibility among multiplicity of board members, each hiding behind the anonymity of the others and smother sound administration in a mess of red tape and legalisms.

The Williams-Daniels bills call for placing clear-cut responsibility in the Secretary of Labor, relying on professional advice, to set safety and health standards and to effectively enforce the law. Here we have responsibility placed in the hands of a cabinet member specifically charged with the responsibility of handling labor-management problems.

This is not a mere difference in words or theory, but the real difference between effective, meaningful and practical fulfillment of the spirit of any sound occupational safety and health bill. To place the administration in an independent board and panel is to condemn the act; in its inception, to foot-dragging, evasion and indecision. This would be fatal.

Let me cite just one of the many serious differences between the Williams bill and the so-called "compromise" bill . . . the Williams bill proposes that a representative of the employees and the employer shall be permitted to accompany the government's safety inspector through the plant. This was written into the bill to eradicate the dismal but widespread practice in many states in which inspectors have not even consulted the affected workers pertaining to the hazards in the jobs. This is an unhappy fact which is common knowledge among all industrial safety and health experts. Notwithstanding, the "compromise" bill does not provide this obvious safeguard. This single item, typical of many serious differences between the bills, should give you some of the flavor and essential direction of the "compromise" bill.

You charge that the AFL-CIO is "mulishly firm" in its position. Are you not aware that the Secretary of Labor has publicly taken the position that he would rather have no bill than the Williams-Daniels measure? Do you define this as sweet reasonableness or "mulishly firm?"

Finally, I do hope that you will reconsider your editorial stance on this issue. Maybe on careful afterthought you will discover that the AFL-CIO is making an honest and earnest effort to provide a meaningful federal presence in an area of grave humane concern; that we are fighting for the better not the lesser bill; that we are right in not being content with a pretty facade without substance, a sham, a hollow shell—for that is what the "compromise" bill adds up to.

I am sorry that this is a long letter but it hardly begins to sum up the gravity of the problem, and the need for truly sound legislation rather than phony political gestures.

Mr. YARBOROUGH. Mr. President, I congratulate the able Senator from New Jersey on a job well done, on a job fairly done and on a job where he patiently sat day after day getting the ideas of every Senator on both sides of the aisle in his effort in the subcommittee and in the full committee and not to steamroller the bill. That is why it is so late in this session coming up before the Senate, because the chairman was so fair about it.

Mr. President, I ask that the bill be laid before the Senate and given its full and proper consideration.

Mr. WILLIAMS of New Jersey. Mr. President, on that last point, the bill, as I indicated, has been before us for a long, long time.

On May 16, 1969, I introduced a bill, S. 2139, for myself, Senators Yarborough, Mondale, and Kennedy. Then, on August 6 of last year, a

bill designated as the administration bill was introduced by the Senator from New York (Mr. Javits).

Following the introductions and the referrals of those measures, we began hearings back in September of 1969. The first day of the hearings was on Tuesday, September 30, 1969. Periodically since then, hearings were held whenever it was indicated by individuals, or associations, that they wanted to be heard. The final hearing was held in May of this year.

Following that, we have had long, long sessions in the subcommittee and the full committee. There were periods of long deliberation. I have not logged the number of hours I sat as chairman of the subcommittee waiting for quorums so that we could do business, but it was many long hours in both the subcommittee and the full committee. The patience of the chairman of the full committee was needed, too. This is not stated as a matter of complaint but as a matter of fact, that this has been a long and deliberative process.

This is major legislation, as has been so clearly stated here already this afternoon. The question now is to take up the measure that is so high on the list of the priorities of this administration—yes, in the closing hours of adjournment here. The point was made that there were only 70 Members present for the last rollof vote. The pundits who watch the Senate scene suggest, after adjournment and the elections, and we come back, that perhaps there will be even less than 70 Senators on hand in what they call a lameduck session.

This bill is a major matter. It calls for a major effort on the part of the Senate in its closing hours before adjournment.

Mr. DOMINICK. Mr. President, I do not intend to take very long but I do want to make one or two points.

I have listened to what my distinguished chairman has said with great interest, that there is a great need for an occupational health and safety bill and no one is denying that. As a matter of fact, the substitute that I offer will call for national safety standards. This is the point we are trying to make. The question is that it is tough enough to promulgate those standards and it is going to be hard to enforce them. How will we make sure it is not used as a harassing tactic by someone who may be disgruntled in a plant? My bill will obviate most of those problems. The committee bill will not.

I do not think that we ought to be carried away with rhetoric on the grounds that those who are against considering this measure at the present time are against health or motherhood or any or the other computations that might be made from some of the comments that have been made.

A great number of Senators have referred to the urgent need for speed on this matter. We have to take it up in the last day of the session, in the last 24 hours, before we recess. The committee bill itself says that there will not even be any health and safety standards put into effect until 2 years after the bill has passed. Nor can we get the bill passed until November because the House is not going to work on it until November.

Why in the world are we spinning our wheels, if I might say so, here, when we have a lot of other matters to take up? This measure cannot become effective until November. It will be 2 years after that until we get any standards at all.

It seems to me that what we have been talking about may make some good emotional appeal. I am sure that it does. However, let us

be realistic. I am as concerned about the health and safety of the people working all around the country as is anyone else. But when we propose to inject the Federal Government into every business in the United States, we had better do it with care. Otherwise, we might find the whole bill rejected out of sheer resentment when the bill gets implemented.

We were happy that we were able, as pointed out by the Senator from New Jersey, to include a few revisions and amendments in the bill. I am glad that the Senator from New York and his very able staff put those together and outlined them so that Senators could see what we were concerned about.

The bill when originally presented and considered in the committee would have covered every employee of the State and local governments in the entire country and would have required that the States, before they could administer any kind of State plan, must make sure that all employees of all local agencies abided by the standards that had been established.

The difficulty with that is that in many cases the States do not have jurisdiction of some of those local employees. We were able, I am happy to say, to get them exempted from the bill in cases where States do not have jurisdiction. They do not have to require this because they do not have the power.

It seems to me that those are pretty good proposals. There were a lot of others that those on the majority side were happy to accept, and they did accept. That was not by rollcall vote. It was only when the majority side was willing to accept them that the committee accepted them.

I am not naive enough to say that we can win in committee when the majority side is against us.

Let me repeat that here we are 24 hours, hopefully, before adjournment, and we have debated this now on the motion to proceed to consider the bill, I believe, for about an hour.

We debated the Church-Cooper amendment for 42 days. We debated the military procurement bill, as far as I can recall, for 29 days. We debated the direct vote ad infinitum, it seems to me. Three cloture motions were filed. Two votes were taken and we could not get cloture.

We have now been debating the equal rights for women amendment. We have adopted two amendments. We have been engaged in this for weeks.

Why, in a bill that is of this crucial importance, can we not have a little time to try to get everyone up to date on the provisions of a very intricate bill?

It is for that reason that I thought I ought to have this time in which to explain my feelings on the lack of wisdom on the part of the Senate in bringing up this bill at this time.

I am not dumb enough to say that I am going to vote against the whole thing. We will go ahead and debate it if that is the majority wish and the bill is brought up. But it seems to me to be an exercise in futility at this moment.

Mr. GRIFFIN. Mr. President, I want to indicate that when the pending motion of the majority leader to call up the occupational safety bill is presented, I shall support the majority leader. However, I must say that I share the views of the Senator from Colorado (Mr. Dominick) and the Senator from Ohio (Mr. Saxbe) that it is most

unfortunate and untimely to place this complex and controversial 91-page bill before the Senate in the closing hours just before the recess when many Senators, some of whom are keenly interested in the measure, will be absent.

Of course, it is the prerogative of the majority leadership to determine the order of business of the Senate. Without doubt, if the majority leader presses his motion, he would have the votes. The leadership on this side will not oppose the majority leadership on this procedural matter if it is pressed.

I share the expressed doubt that the Senate could finish the debate and vote on this complex bill before we recess tomorrow.

That being the case, Mr. President, it is likely that we will have to start all over again on this measure when we do come back following the recess. In the meantime, if we proceed now to consider the occupational safety bill I assume that we will then be unable to act between now and tomorrow night on other matters, routine and otherwise, that could well have the attention and action of the Senate.

Mr. President, with those remarks, I state again that I shall support the motion of the majority leader if it is put to the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

Mr. COOPER. Mr. President, I recognize, as does every Senator, that the pending bill is one of the most important bills that will be before the Senate at this time or in the session when we reconvene in November.

It is a far-reaching bill. It affects the safety, as has been said, of every worker in this country, other than those now covered by the coal mine safety bill and, I believe, one other group of employees.

We know that the Labor and Public Welfare Committee has given this matter very thorough consideration. What committee members have said today indicates their thorough knowledge of the bill.

But, all of us must vote on the measure whether or not we serve on the committee. We, too, would like to know the provisions of the bill and their adequacy in providing safety for those who labor and their effect upon management.

I have been concerned about the hasty disposition of important measures by the Senate in the last 2 or 3 weeks.

First, we considered a constitutional amendment, the so-called direct election amendment, which would change the basic structure of our Government as far as the Federal principle is concerned. The debate went on at a time when 35 Members of the Senate are candidates and at times away from the Senate. I have not thought it best to take action upon a measure of this importance in the waning days of the session.

In the last few days, we have been engaged in debate on the constitutional amendment concerning equal rights for women.

I do not think the proposed amendment has been treated very well, whatever one's views may be. While it has been discussed seriously, it has also been made the butt of criticism and laughter.

I have some prior experience in connection with safety bills. As a member of the Committee on Labor and Public Welfare for 5 years, we considered these matters, and we reported several fine bills dealing with mine safety. I have had a particular interest in that legislation because Kentucky is the second largest producer of coal in the Nation,

with thousands of miners. Time after time we tried to report bills which would be fair, protect the miners and yet not be punitive.

During the last year a bill was reported to the Senate and debated for 5 days. I voted for the bill, but since its passage, statements made during the debate by those of us who opposed certain provisions in the bill have been proven—unfortunately—accurate.

We argued, on the economic side, that to include in the so-called gassy mine category all the nongassy mines and require them to expend huge sums of money for equipment needed in gassy mines, would not advance the safety of the miners but would force the small operators to shut down. That has happened to some of the small mines in my State.

With the closing of the small nongassy underground mines we also predicted it would cause stripping of large areas of coal. That has happened, without providing any added protection to the men who work in the nongassy mines. Many were driven to seek employment in the gassy mines—mines proven to be the most dangerous.

The record for Kentucky will show that since this bill was passed last year that more persons have died in the mines than in the year before. As I recall, and this is pertinent to the bill before us, in 16 years, in about 3,000 nongassy mines there were 52 ignitions or explosions and 27 deaths, and in the 400 gassy mines there were 381 ignitions and explosions and 374 killed. Yet the mine safety bill treats them alike, and is forcing the nongassy mines to close.

I made these statements during the debate. But the committee insisted that its bill be approved. There were 5 days of debate, but even so, it was difficult to debate, because it was highly technical. My predictions, and those of my colleague from Kentucky (Mr. Cook), and the Senator from Tennessee (Mr. Baker) have come true. More people have been injured since that bill was passed.

Mr. President, I want to vote for a strict safety bill, but how can those of us who are not on the committee and who have had little chance to study it during the last few days since its report, vote with any real knowledge of its effect and consequences? This is the case, the problem when these very important bills are brought before the Senate, in its closing hours.

Yesterday, I was very much interested when the senior Senator from Arkansas brought up the crime bill, S. 30, which was passed by the Senate several months ago. We remember that in the debate at that time many questions were raised about certain provisions of the bill. The bill was termed by some as an instrument of oppression and many of us were doubtful about the constitutionality of certain provisions.

The House amended the bill last week. It was brought before the Senate yesterday, and with a few Members sitting in the Chamber the Senate passed it by unanimous agreement, including not only those provisions which were so vigorously argued against earlier this year but with provisions added by the House of doubtful constitutionality. In many respects the bill is excellent, but its consideration in approximately one-half hour illustrates the objection I make to considering the pending bill at this time.

Mr. President, I give these examples: the crime bill as passed yesterday, the mine safety bill, which at least had 5 days of debate, the debate on Senate Resolution 1, and the equal rights amendment,

which illustrate, I believe, that there is no possibility that this bill can be considered now, as it should be—fairly and adequately.

Mr. DOMINICK. Mr. President, I really appreciate the comments of the Senator from Kentucky. I think this adds great weight to the comments made by the Senator from Ohio, the Senator from Michigan, and me.

PRIVILEGE OF THE FLOOR

Mr. President, I ask unanimous consent that during further proceedings on this bill a member of the minority staff, Richard Weiss, may remain in the Chamber.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COOK. Mr. President, I wish to join in the remarks of my senior colleague and say that on the coal mine safety bill, after 5 days of debate, it was impossible to get at some of the problems in that bill that have now caused one of the most serious crises in the country.

I might say that as a result of closing many mines in our State that did not fall within the category of the tests that had previously been laid down on what constituted gassy or nongassy mines, we in the Commonwealth of Kentucky now face a far greater problem, and I would like my senior colleague to back up this statement: we have now issued more licenses for strip mining in the period of time from the passage of the bill until now than we had at almost any other comparable time in the industry in our State.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. COOK. I yield.

Mr. COOPER. There have been four times as many permits issued in Kentucky since the bill became effective April 1 than were granted during the entire year of 1969. I am informed that over 100 permits for strip mining have been issued.

Mr. COOK. I thank the Senator. Mr. President, I might say there are those in the Chamber who not only talked at great length about how that bill should not have been changed, but who are also its greatest ecological advocates. We now face that provision but we provide for them in the East the means to turn on their lights and television.

Then, we come to this proposition. Will we take up one of the most major pieces of legislation in a 24-hour period? Between now and November 3 will we be able to brag about the fact that we wanted to take it up and somebody else wanted to stop it?

I agree with the distinguished Senator from Texas. He spent a great deal of time on the measure as did the Senator from Colorado, the Senator from New Jersey, and the Senator from Ohio.

But I am not on that committee and my senior colleague is no longer on that committee. We are not going to have a chance to study it. We are going to have a chance to sit here and listen to amendment after amendment, and then try to figure out what it looks like when we get all finished. We will be able to figure it out and we will wind up starting all over again next year or somebody can brag about it. Somehow, I do not feel this is what I came to the Senate for.

Contrary to those who will be criticized for trying to hold up this matter and taking it up at a reasonable time, I want to congratulate them because at least they say to all their constituents, not just a part. "I tried to look at it on all four and study it and make a good

judgment to represent all the people, rather than just a particular part."

So for my part I want to thank the Senator from Ohio, the Senator from Colorado, the Senator from Michigan, and my senior colleague because they are the ones doing this country and the Senate a service.

Those who understand and realize that there is not a major piece of legislation in the history of this country that was worth its salt that was passed in 24 hours will understand that they have had a good colloquy and a good start on it and they will ask that it be made the pending order of business on the 16th of November. If they do not ask for it, then I can only say that if something goes on the statute books, then we will have many suits and we will debate it and we will have much discussion, and we will have no way of ascertaining exactly what was done, and we will go through the whole harangue and the whole discussion, and then someone in the bureaucratic system will come to the conclusion that he did not write the bill; all he was told to do was make the regulation; and there we will be.

I must say that in this hurry and in the last 3 or 4 weeks we have had witnesses before some of our committees, one of them the Judiciary Committee, and I will repeat what I said the other day. When he looked at the piece of legislation that was pending before the entire committee, this professor from Columbia University said it was the worst draft of legislation he had seen since the first draft of legislation for the Sherman Antitrust Act in 1889. If one wants to brag about that, it is in the record.

I want to say that if there are 20 amendments to a bill, and if 10 or 11 get in the bill, and then somebody tells me that as a result of getting them into the bill we will produce the kind of legislation this body ought to produce, that is not the way I learned the legislative process.

Again I say I do not want to stop debate on this matter, but I think we at least have a responsibility to give a tremendous piece of legislation an appropriate time for discussion on the floor of the U.S. Senate.

Mr. SAXBE. Mr. President, I thank the Senator from Kentucky for his kind remarks.

In regard to the remarks made by the chairman of the committee, the gentleman from New Jersey (Mr. Williams), it is true that the subcommittee did a thorough job of hearings on this matter, and it is also true that the subcommittee was interested in trying to get the views of the minority and of the majority who opposed some of the provisions. I believe the subcommittee accepted something like 17 amendments, which went to various contested parts of the bill, which indicated that they were interested in trying to clean up some of the points of discussion and eliminating them.

The chairman of the full committee (Mr. Yarborough) was also open-minded, and accepted amendments by members of the full committee. There were substantial changes, or it would not be as good a bill as it is today.

However, on various points that we think are important in this area, absolutely no ground was given.

When it came to the question of who was going to establish the standards for safety, there was absolutely no interest in opening this question up; it had to be left in the Office of the Secretary of Labor.

When it came to a panel for hearing—and really we think it is like an NLRB—the answer was absolutely “No.”

So to say that there was not time for an attempted understanding is not true. There was. But it brings us right back to the point that we are in conflict on several elements that we think destroys this bill as being useful to both the employee and the employer.

There has been considerable talk about to whom this bill will apply. I think there is some misconception about it. The bill will apply to everyone engaged in interstate commerce except those employees covered by certain other Federal laws, such as the Coal Mine Health and Safety Act. To review, if you will, some of the recent cases on interstate commerce, if one operates a restaurant and he serves a truck driver driving a rig from another State, there is the suggestion that he is engaged in interstate commerce. I well recall a case in Ohio in which a man of very limited means bought old automobiles, picked them up when the police or used car dealers sold them to him, and his main job was to take the tires and generators from these used cars and sell them. He worked with a man, on a part-time basis, stripping these cars. The Federal Government came along, after he had been doing that for a couple of years, and found that he was engaged in interstate commerce.

One might wonder by what stretch of the imagination a man who was handling one or two junked cars would be engaged in interstate commerce. He was said to be engaged in interstate commerce because the iron which he might sell—he had not sold any; it was piling up—would be sold as scrap that would go into steel, which would be in interstate commerce.

If we are ready to accept that interpretation and the one about the restaurant and the one about the bus stop, and if we are willing to accept that interpretation with regard to farm products which go into interstate commerce, then everything is covered with the exception of a household article that is sold to a neighbor.

So here is a safety bill which we think of applying to a General Motors plant with 10,000 employees, where they probably already have pretty good safety standards. But we do not think of the impact it is going to have on people that are not presently covered under the wages and hour standards because of the restrictions as to number of employees, or perhaps those who are not even covered by unemployment compensation. We do not think of the impact, perhaps, under the arbitrary power of the Secretary of Labor, who would set up the standards that would probably be very well geared to a General Motors plant, but which ought to be adjusted and fitted to the man who employs one part time employee.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. SISKIE. I yield.

Mr. DOMINICK. When I was serving in the State legislature in Colorado, one of our problems had to do with a boat safety act which had been passed by Congress and one of the committees insisted that it become a part of our laws. They defined a boat as anything that floated, which meant that a canoe or a life raft which floated on the Colorado River was covered by that bill. Standards were established that they had to have emergency lights, fog horns, and lifesaving lines, and everything else. How that equipment was supposed to fit on a one-man rubber life raft or a canoe I was never able to comprehend.

This is the same kind of problem that arises when we try to employ massive safety requirements for people who work in a General Motors plant and also those operating bus stop restaurants—which I do not think makes sense.

Mr. SAXBE. Well, I think that that is going to come as quite a surprise to a great many of the people of this country who have not even heard of this bill that we propose to pass this last day, in the afternoon, here in the Senate. And probably there are other measures that demand a great deal more attention.

What disturbs me is the idea that we come down here to the last day, in the afternoon, with the assumption that we are going to let this bill go through, with 70 Senators present—that those of us who oppose it are somehow going to go home or go to sleep or do something, and that the bill is going to be passed.

I assure Senators, if they think they have had trouble on Senate Joint Resolution 1, they are going to have more trouble on this, and for the same reason: Because we are going to offer 20 amendments. We are not going to agree to any time limit, and we are going to stay here until next Sunday if we need to.

I want to review at this time some of the things that are in this committee-reported bill, S. 2193. As I said, it covers practically all employees engaged in business affecting interstate commerce.

The Senator from Colorado pointed out an interesting thing when we got into this question of covering of State, county, and local employees. Here was the Federal Government that was going to presume to move in on the sovereign States and their political subdivisions, and set standards of health and safety.

Now, granted, there may be operations at those levels that are unsafe and should be corrected. I think the Senator from Colorado will agree that the problem that immediately faces us is, how are they going to engage in interstate commerce, for example, running a mental institution? The problem of extending jurisdiction on a broad basis over all these political subdivisions was finally worked out by the committee by just doing away with it.

The question of exemptions and variances: Very obviously, there had to be relief and a safety valve in this procedure, and these variances could be granted if an employer provides working conditions just as safe as the Federal-standard conditions.

It has been suggested and we will offer an amendment on this, that a board rather than the Secretary of Labor should be the entity that would grant such a variance. We think it is unseemly that the Secretary of Labor should be the only one that could grant a variance on a safety standard or a safety rule. It comes right back to the same board again on the overall standards.

The National Occupational Safety and Health Board would be separate and independent of other agencies. This, of course, can be determined, and we would have some various views on it; but we suggest that it could be five members. It could be seven or it could be nine, but the suggestion was that it be five members. They would have to be qualified by previous training and experience in the field of occupational safety and health. They would be appointed by and serve at the pleasure of the President.

We are well acquainted with another important element in labor problems: The National Labor Relations Board, a body that is appointed and serves for a term, but subject to approval by the Senate.

What kind of standards are we going to talk about? What types of standards would this board come up with? The committee bill says that the Secretary of Labor, properly advised, would come up with standards.

National consensus standards—that is, consensus on standards of health, in plants and out, that are readily acceptable all over. Then there are existing Federal standards in some fields, and standards promulgated prior to the date of enactment of this act by national organizations on a nonconsensus basis.

The first two types of standards must be issued by the Secretary as soon as practicable, within 2 years following the effective date, unless the Secretary determines that their promulgation will not result in improved safety or health for certain employees.

During the same period, the Secretary may also promulgate the nonconsensus standards.

The Secretary, under his authority to set permanent standards, is empowered to "promulgate, modify, or revoke."

In the substitute bill, it is made somewhat simpler by listing the national consensus standards and already existing Federal standards, as in the other one, but then it says they are to be issued by the board within 3 years following the effective date, unless the board determines that such standards will not assure safer and more healthful working conditions.

Here we are, talking about health standards 2 years away, or 3 years away and yet, on Tuesday afternoon, we are supposed to be able to pass this bill, because we want to go on a recess over election.

I would agree to put this down as the first order of business on November 16. I intend to vote for this bill. I also believe that we should get these standards adopted by a board rather than by the Secretary of Labor, and this is what we intend to do.

What are the different types of standards? We have early standards, emergency temporary standards, and permanent standards.

The early standards are promulgated by the Secretary by rules, and the Administrative Procedure Act does not apply except in the case of nonconsensus standards, where informal Administrative Procedure Act rulemaking procedures apply—that is, submission of written views with informal hearings on the Secretary's discretion.

I think that this, again, is a deviation that we should certainly discuss and look over in great depth, because we might want to require the formal procedures of the Administrative Procedure Act, to apply to the adoption of these standards. It would apply with a board if we did not specifically exempt it, and I do not think there is any inclination to do that.

In the committee reported bill, permanent standards are promulgated by the Secretary under informal rulemaking procedures of the Administrative Procedure Act, but a hearing is required, and I think this is proper, if an interested person objects to a proposed standard. And I am sure, with the wide latitude of this bill, that in time there will be those who object.

In the substitute, the permanent standards are set by the board, using formal rulemaking procedures of the Administrative Procedure Act. In other words, it operates within the formal procedures of the Administrative Procedure Act.

On permanent standards, under the bill as set up in the Senate committee, the Secretary is required to issue a standard within 60

days after the expiration of the period provided for the submission of views, as required by the Administrative Procedure Act, or within 60 days after the hearing, required where an objection is made, ends.

The board is required, under the substitute, to promulgate a standard 60 days after the formal hearing ends, if an advisory committee is utilized. The advisory committee is separate from the board, and if the advisory committee operates without the board, it has no power in itself. It only can advise, and it can be dismissed and operate only at the pleasure of the Secretary of Labor.

What are the tests for standards? In setting standards, the Secretary, under the Senate bill as reported, is required to set the ones which most adequately and feasibly assure that no employee will suffer any impairment of health or functional capacity or diminished life expectancy, even if such employee has regular exposure to the hazard dealt with by such standards for the period of his working life.

This part is in the bill as reported, and one of the reasons why I would prefer to amend the bill as reported rather than accept the substitute, although I would vote for the substitute, is that I believe this to be a good provision.

Mr. DOMINICK. Mr. President, will the Senator yield at that point?

Mr. SAXBE. I yield.

Mr. DOMINICK. In other words, if we tried to get an agreement under which we would have a time certain to vote on the substitute today, it is the Senator's feeling that this would not be advisable, because he would want clarifying amendments to the bill itself, as opposed to voting on the substitute. Is that correct?

Mr. SAXBE. That would be my attitude, because I would rather amend the reported bill than accept the so-called Steiger bill. I would vote for it because it generally contains the things in which I am interested. But the administration bill, as introduced by the Senator from New York (Mr. Javits), also contained many of the provisions that are now in the reported bill, and I like that. I also like the amendment which Senator Javits submitted in the committee, which has to do with an enforcement panel.

Mr. DOMINICK. The Senator recognizes that both the board and the panel are in the substitute bill.

Mr. SAXBE. They are in the substitute bill.

Mr. DOMINICK. I just wanted to make this certain, because there had been suggestions that perhaps we could reach an agreement whereby we would vote on the substitute some time tonight. I was not sure that I was going to reach agreement on the substitute but that does not seem to be a fruitful course of action because there would be so many clarifying amendments before the substitute would be considered.

Mr. SAXBE. In the provision which has to do with diminished life expectancy, it is pretty difficult to establish what is going to diminish one's life expectancy. Working itself is apt to diminish one's life expectancy. If one wants to stay home in bed, he probably will live longer than by standing at the plant and doing his job. It is a difficult thing to establish. I think that would have to be clarified.

There is no question in my mind that if one works as an insulation installer on steampipes or hot air pipes and is using asbestos in any shape or form, there is no way in which he can avoid a shortened life expectancy, under the present safety rules. It is a real question

to me as to whether asbestos can be used at all, whether it can be handled.

When asbestos was first mined, it came in great sacks, like wool sacks, and little boys were used to tramp the asbestos down into the sack. Their life expectancy was approximately 2 years, and they were only 10 years old.

We have come to the point now that protective breathing apparatus is used, but the asbestos fiber is very fine, and it builds up in the lungs over a long period of time. Asbestos, unlike other dust or fibers, is never assimilated and it is never removed from the lungs. It stays there, and it can only become more difficult to breathe the longer one works with it.

As Senators know, last year in our committee we had extensive hearings as to the buildup of coal dust. Some evidence was presented that even though it is built up over a period of time, it did tend to diminish if one were removed from exposure, and there was some question as to whether it actually reduced life expectancy.

But in this paragraph, where we are talking about functional capacity or diminished life expectancy, any type of exposure is going to affect it. One example is working in a paint shop or working in an automobile line, a final assembly line, or on a paint line. A great deal of study has been made of these things. Yet, substantial skill is required to be an automobile painter, which means that the person who acquires this skill already has a substantial buildup of inhaled paint particles before he achieves the skill required to hold a steady job. This is true of many installers of asbestos and other fibers. By the time they reach the skill that is required, they already have an impaired life expectancy.

In the committee bill, with respect to labels and warnings and monitoring or measuring and medical tests, it provides that standards shall prescribe the use of labels, warnings, and, where appropriate, employer monitoring or measuring of employee exposure to hazards, plus types and frequency of medical examinations or other tests which shall be made available by the employer, at his cost.

Mr. President, I was speaking on the point, how are we going to control these things? Again I point out that one of the difficulties in trying to discuss this bill at length in such a short period of time is that the substitute bill, which is known as the Steiger bill, provides that standards must be prescribed for the posting of such labels or warnings as are necessary to apprise employees of the nature and extent of the hazard and of suggested methods of avoiding or ameliorating them, and that standards promulgated under this substitute may also provide for medical examination, monitoring, and the measuring of employee exposure to hazards.

What kind of measuring? Well, in the area of exposure to atomic nuclear equipment of any kind, standards have been attempted, but it has caused a great deal of confusion.

Exposure to nuclear material is measured in roentgens. The geiger counter can give the intensity at any one time, but the geiger counter does not give, over a long period of time, the cumulative effects of the exposure, which means that the safety experts had to devise a means to obtain a cumulative effect so that there could not be a fatal or serious buildup of roentgens within the human body.

The exposure to nuclear material does dissipate itself. Therefore, limited exposure, such as we get from x-ray equipment in hospitals or doctors' offices, is kept under control, and is not a serious danger.

But the difficulty has been, as we have brought this into more and more industrial use, that at the beginning they were not aware that the cumulative effect over a period of time carried the great danger. So, in the early days, there were numerous exposures that have appeared only in later years.

If we are going to do this in regard to nuclear exposures, we are going to have to do it to a great many other of the latent insecticides, pesticides, and fungicides that we now use so commonly. In other words, the cumulative buildup resulting when one of these materials has a long half-life, and stays in the tissues of the body or stays in the tissues of animals which we now use for food, or in the bodies of fish, is a development that we have been completely unaware of until recent years.

A few months ago, no one never heard of the mercury problem resulting from the mercury buildup in fish.

Why did we not hear of that problem?

The primary reason was that mercury, being one of the heaviest elements, when it was released in waste from certain factories, was presumed immediately to sink to the bottom of whatever river or lake the drainage emptied into, and would never again be a problem. But we were very much surprised to find that when this same mercury was ingested in breathing or as a result of eating fish, there was the very unusual—strange, I might say—chemical reaction which made the mercury become available in the body of the man who ate the fish.

So, we had the great mercury scare last year.

The fish in Lake Saint Clair, which is between Lake Huron and Lake Erie, were declared to be inedible and, for awhile, they even closed off the fish in that body of water; and then the commercial fisheries on Lake Erie were closed, and on the rivers leading into western Lake Erie. Then it began to appear that this was in a great many other streams and rivers, not just in the Great Lakes region, but that the mercury had built up everywhere.

This happens in the bodies of people exposed not just to mercury but to other forms of subtle poisons, of which we are completely unaware today.

There is a great deal of research still necessary in this health field, which is one of the reasons I was persuaded we needed a health and safety bill on a national scale, because of what can be done on a national scale as a result of this kind of legislation.

I was first of the opinion, and I think this is a natural reaction of those who have been involved in State governments, that this was a field where the States had done rather well. I know that, in my own State of Ohio, everyone is safety conscious in the bigger industries, and that safety is in the best interests of profit-making for any corporation. There is no corporation that will permit an unsafe operation because it is a money-losing proposition to do that. It is not a money-making proposition. Yet, I was reluctant to have the Federal Government usurp still yet another field which the States have occupied and, in many cases—I do not say this about all States—have done an admirable job in providing safety standards and safety enforcement.

Mr. DOMINICK. Mr. President, will the Senator from Ohio yield at that point?

Mr. SAXBE. I yield.

Mr. DOMINICK. I am extremely interested in this. I participated with the Senator from Kentucky on the Coal Mine Safety Act, serving both on the committee and on the floor here, trying to maintain a distinction between gassy and nongassy mines; but more important than that, so far as our State of Colorado was concerned, was the consideration of the Nonmetal or Metallic Mine Safety Act. In committee, I pointed out to the Senator from New Jersey and the other members that Colorado had standards which were similar or superior to the Federal standards, and that if the Federal standards were in effect, Colorado's standards were going to be eliminated and had to come under the Federal program. I also pointed out that the Federal Government did not have the inspectors to be able to take care of the safety problems once they took it out of the hands of the State.

We had specific evidence of that. Testimony from the Bureau of Mines, as a matter of fact, elicited that it would take about 4 years to get a sufficient number of inspectors. Thus, I asked that there be included a provision in the bill as it came out of committee, that where a State had standards which were satisfactory, to the Department of the Interior or the Bureau of Mines, they would be permitted to continue their own inspection procedures. To my total amazement, the majority of the committee turned it down. As a matter of fact, I just made a brief speech on that this morning, during the morning hour. They turned it down, but the House insisted on it. We finally did get it through, but it has been 4 years since that bill was passed before we have gotten agreement with the Bureau of Mines that the State can do its own inspection in its own mines where their standards are higher than those of the Federal Government.

This again is one of the things involved. The Senator from Ohio brought this type of thing up in this particular case. What will happen where we have a conflict between State and Federal health laws? Will the Federal Government be able to take over?

I do not know whether there is any adequate provision in this bill. **Does the Senator from Ohio know?**

Mr. SAXBE. Mr. President, I do not know. However, I do feel that in the years that are permitted for the States to get back into this field, they can again take over their enforcement if and when they might or should establish standards.

Mr. DOMINICK. Standards which have not even been set as yet and will not be for 2 years.

Mr. SAXBE. It will be extremely difficult to establish standards that are going to be adaptable to the States when we have a 3-year delay before they are established and then an additional 3 years before they will have a chance to get back in.

What will these inspectors do at the State level in the meantime?

Mr. DOMINICK. Mr. President, I think that the Senator from New Jersey wants to answer that question.

Mr. WHITMAN of New Jersey. Mr. President, I was going to ask a question and not going to answer the question raised by the Senator. We are talking about the relationship of Federal programs to State plans.

Mr. DOMINICK. Mr. President, I asked a question concerning where-
ever we have a State that has safety standards which are strict and

effective in a particular industry at this time and the Federal Government has not promulgated any standards in that particular field, what happens and who has jurisdiction.

Mr. WILLIAMS of New Jersey. Mr. President, reading from the analysis of the committee report on the bill and the substitute bill, . 4404, in this area on page 11—and it was filed by the Labor Department—it is their position that in this area, the committee report on the bill and the substitute bill are the same.

Mr. DOMINICK. Mr. President, that may be. But I do not know if that answers the question. What do we do about it?

Mr. WILLIAMS of New Jersey. Well, we could read what it says about the State plans. Where they desire to set their own standards, they may submit a plan to the Secretary of Labor. If approved by him, the State standards and their enforcement by the State control.

Mr. DOMINICK. Mr. President, I thank the Senator from New Jersey for pointing that out. I also see the other statement that says that where no standards exist, the State standards will apply and be enforced.

I am not clear about who enforces them or what happens when they are in the process of establishing standards and the State already has standards.

Mr. WILLIAMS of New Jersey. Mr. President, if there are no Federal standards and the State has standards, in the interim period the State would enforce its own standards.

Mr. DOMINICK. Mr. President, I appreciate the statement of the Senator from New Jersey.

Mr. SAXBE. Mr. President, one of the other areas that are somewhat similar concerns a standard appeals section whereby if these standards are promulgated by either the Secretary or a board, they have a right of appeal. If they believe that they, under the Constitution, do not comply with the due process standards or are confiscatory. They can go to court. In this area I would foresee that in many areas there would be enough substantial change—and I am talking now primarily in the high-hazard area—that there will be sufficient change if we have litigation, for the purpose of litigation, to keep these avenues open. How long this delay will be is another thing.

That raises a question concerning our haste at this time. I would foresee that Federal courts of appeal would grant stays or otherwise slow down action on this matter if any plaintiff can come in and show that the imposition of these standards are going to put them out of business or that they will seriously affect their rights to compete, or they can show that such standards were adopted without provision for their day in court—that is, without due process.

It seems to me that we can avoid that point being raised by the board which would have within itself, as a quasi-judicial body, the ability to hear appeals and, operating under the Administrative Procedures Act, it would avoid a great many of these future court cases in the court of appeals and the delay that will result from holding this up for a long period of time.

Judicial review, of course, is a necessary part of any act of this kind. We will have it whether we put it in here or not. But it seems to me that the Court of Appeals of the District of Columbia is the only forum and that it does make some sense and that the time period being

reduced to 30 days will cut down the period of time that this litigation will be hung up in the court.

OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. SAXBE. Mr. President, I was pointing out that there is nothing we can do to limit appeals on the constitutionality of any act we do here. However, it seems to me that if a board were set up with quasi-judicial power to have hearings under the formal procedures of the Administrative Procedure Act, that would avoid some of the pitfalls we might come up against here.

Mr. COOK. Mr. President, will the Senator yield?

Mr. SAXBE. I yield.

Mr. COOK. Mr. President, with relation to the matter of judicial review, let us assume that under section 18 of S. 4404 of the committee report, which would be section B, a State has a plan that had been accepted by the Secretary of Labor. As I understand this, the Secretary of Labor, notwithstanding the fact that he has approved a plan, can automatically take a position that it is not an approvable plan any longer. And that the only judicial review is to the U.S. court of appeals in the circuit in which the State is located; and then, the only plea of the State is that the actions of the Secretary of Labor are arbitrary and capricious. Forget about the constitutional question because they could always plead the constitutional question. But the only plea the State could make is that the actions of the Secretary of Labor have been arbitrary and capricious, and the burden is on them to prove it.

Mr. SAXBE. That is the way I see it. That is one of the problems.

Mr. COOK. Did not the Senator feel, when he was attorney general of the State of Ohio, that one of the hardest things to prove is that actions were arbitrary and capricious or that the actions of a governmental body or elected body were arbitrary and capricious, and is it not true that the Senator could count victories on that ground on one hand?

Mr. SAXBE. That is true. I also question the ability of a State to come in and successfully maintain an action against the Federal Government because, at least in the beginning, I do not see how a State can perfect a plan to equal a plan that they do not know will be the plan. In other words, they will lose their first round.

Mr. COOK. They not only have to establish that their plan is better in regard to a Federal plan that is not in existence, but also that the Secretary of Labor acted arbitrarily and capriciously.

Mr. SAXBE. That would appear to be true. I am taking the Senator at his word that he eliminates the constitutional provision.

Mr. COOK. Oh, yes.

Mr. SAXBE. This was subject to great discussion, and the Senator will find it in the minutes of the hearings. It has been the subject of great discussion since that time that some States are presently running good health and safety departments. Maybe they are not as broad as the Federal plan might be or as worked up by the Secretary or the board, but one that is doing a good job. As pointed out there is a great discrepancy in the State activities in this area. Some spend \$2.15 for every worker and some spend less than \$1.02 per worker.

But in this area of the "good State" they have a number of inspectors, safety examiners, that can go around and perform the various tests and also make regular visits to these plants. This would necessarily be interrupted. There is a probability where the State has a good system and intends to get back into it, that they will hang on to those people. For a period of time, anyway, they will have a dual system that we hope, in most instances, will be superseded by the State regaining control; that is, they will have equal or better.

The only disturbing thing is that history does not report this happens very often. Once the Federal Government goes into an area of safety for whatever it might be, it is with extreme reluctance it ever gets out. It is questionable in my mind, if the Federal Government is running and paying for this program, whether the hard up States will want to get back into it again because of the tremendous expense to revitalize the system which might not have been operating during establishment of the federal system.

I know Republican members on the committee, and all minority members here to whom I have spoken, do not question that we need something in this area. I know that some Members of the majority spoke on this matter. We were reluctant in the beginning to acknowledge the fact that a great many States were doing a poor job.

Some of us come from industrial States where they are proud of the job they do. But we acknowledge there are areas, as the chairman of the committee, the Senator from Texas, pointed out, where the safety standards are used for competitive advantage. In other words, this is especially true as to hours of labor, where fatigue comes in, noxious fumes, dust, and lint—where it is to the economic advantage to neglect it. We gradually came around to the realization that the States, regardless of what they said to us in the committee, were not living up to their promises. In some States it was a political football. When the Administration would change the inspectors would change. They were not always career people who were qualified. Many times they were local politicians who were offered a job without any real training in health and safety.

We discovered that sometimes when an inspector would be coming around to a plant they would know a week ahead of time when he was going to come. Employees testified that deficiencies at the plant or worksite were corrected for the visit of the inspector and afterwards were allowed to rapidly deteriorate.

It was pointed out that there are certain types of work incentives that contribute to unwise practices. I am thinking specifically of some of the work schedules where it was to the man's advantage to neutralize the safety device on his machine so that he could get a greater production. I have seen machines, and so has the Senator where there was involved some kind of metal fabrication, where there was a press and the operator would have to have one foot and both hands in a certain position to make that press operate. How easy it is for a man who is trying to speed up on his piece-work rate to wire one of those switches down.

Mr. COOK. Mr. President, will the Senator yield?

Mr. SAXBE. I yield.

Mr. COOK. Mr. President, I wish to thank the Senator for his explanation, particularly that part about review, because if we are limiting the States' authority to a cause of action based on the arbi-

trary and capricious attitude of the Federal Government or the Department of Labor, we should advise all 50 States, and their labor departments that it will be very, very strange if they can ever win a case.

I might say to the Senator that this really bothers me because the distinguished Senator from New Jersey handled a manpower training bill not too long ago that was passed by this body. The bill was handled on the floor of the Senate not too long ago. There was one section in that bill on the question of an employee and it provided that if anyone on the hearing panel or the staff of the hearing panel gave out any information on the case he would be subject to a serious fine and imprisonment. It provided in that measure that the decision of the panel was not appealable to any court. This just about shocked me right out of my shoes.

When we now come to a situation in which we are saying to the respective States, in regard to the regulatory action of the Secretary of Labor, or his administrators, that when the United States is in violation, the only course of action that State has is to go to the court of appeals in his circuit, and that the only plea can be that the action of the Secretary was arbitrary and capricious, we can just say to the respective States that they just are not going to win any lawsuits.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield?

Mr. SAXBE. I yield.

Mr. WILLIAMS of New Jersey. I observe that the provisions in the committee bill and the bill introduced by the Senator from Colorado are the same in this regard.

Mr. COOK. I am delighted that I am present to hear that. Otherwise I would not have known it. Certainly the Senator from Kentucky would offer an amendment to see that the latitude of the States was protected other than by a single plea of arbitrary and capricious action on the part of the Secretary.

Mr. SAXBE. I know this is old grist for the mill of the Senator, but the substitute bill—and this is why I do not warmly embrace the substitute bill—allows for appeals in the District of Columbia Court of Appeals.

Mr. WILLIAMS of New Jersey. I realize that the substitute bill does that, whereas the committee bill permits appeal to the circuit courts in the States.

Mr. SAXBE. That is correct. I invite the attention of the Senator to the fact that in the substitute bill—and again, if we adopt the substitute I hope this part will be amended—the States are limited to the Court of Appeals for the District of Columbia. If the case arose in California, those seeking relief would have to come to the Court of Appeals in the District of Columbia to assert their right.

Mr. COOK. I do not have any objection to that, because I do not think it is any problem for a State to come to the Court of Appeals in the District of Columbia, but I must confess that I think the trip is made just that much longer and lonelier if the only cause of action when the person gets here is to plea that the Secretary of Labor acted arbitrarily and capriciously in regard to the denial of a plan. I think the latitude of the respective States, other than the constitutional rights under the act—which rights are always guaranteed—should be broader than that particular cause of action.

Mr. SAXBE. I think the Senator from Colorado (Mr. DOMINICK) will bear me out on this. If there were a board to set the standards, the board would operate, as I pointed out awhile ago, under the formal procedures of the Administrative Procedure Act. There would then be an opportunity to have a day in court there, with all the benefits under the Administrative Procedure Act, as to the setting of standards.

Mr. DOMINICK. The Senator is correct, and that is the major difference between the two bills—having the ability to use the formal procedures of the Administrative Procedure Act in setting standards as opposed to having a very informal procedure, and practically no Administrative Procedure Act—some, but not all, in setting of standards under the committee bill.

One of the things that bothered me—and I would like the Senator from Ohio to comment on this—is some of the language that appears on page 39 of the bill reported by the committee. We discussed it in committee when I was there, but not at great length, and I would like to get the Senator's viewpoint on it. It states on page 39:

The Secretary, in promulgating standards under this subsection, shall set the standard which most adequately and feasibly assures, on the basis of the best available evidence, that no employee will suffer any impairment of health or functional capacity, or diminished life expectancy even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

How in the world are we ever going to live up to that? What are we going to do about a place in Florida where mosquitoes are getting at the employee—perish the thought that there may be mosquitoes in Florida? But there are black flies in Minnesota and Wisconsin. Are we going to say that if employees get bitten by those for the rest of their lives they will not have been done any harm at all? Probably they will not be, but do we know?

Mr. SAXBE. I can only answer by referring to a case we had in Ohio which resulted in the biggest single verdict in a civil case that had ever been returned. This was 20 years ago. I am sure the size of the verdict has been greatly exceeded since that time.

I am reminded that if there is negligence, the employer is liable, just as he is today. But in this particular case a railroad brakeman working trains in an area where there was a slough filled with trash and water, was bitten by some mysterious creature which evidently had been hatched in and flew up out of the slough. As a result, the brakeman got an infection in his leg and he lost the leg.

He sued the railroad for a fantastic amount for the time, which I believe was \$500,000, because the criminal railroad had permitted this swamp to fester and produce such abominable creatures as the one that had come out and bitten him—which they never identified, by the way.

When we come to saying that an employer must guarantee that such an employee is protected from any possible harm, I think it will be one of the most difficult areas we are going to have to ascertain. But I am willing to go down that road a way. I might add as an aside that it is going to be one of the greatest havens and mortgage lifters for lawyers for the next 20 years that has ever come about.

I believe the terms that we are passing back and forth are going to have to be identified.

I call attention to another one we talked about, which is "free from recognized hazards so as to provide safe and healthful working conditions." What, under the law, is a "recognized hazard?" I know there are labor laws written on what is a recognized hazard. It is not improved a great deal by the substitute.

Mr. DOMINICK. It is "readily apparent" in the substitute. We will not have a meat cleaver on the shelf with use of the term "readily apparent."

Mr. SAXBE. "Readily apparent" to whom? An experienced pipefitter can say that an arrangement of pipes is a dangerous condition, and to you and to me it looks like a bunch of spaghetti, but he is an expert, and he can say it is readily apparent that it is a dangerous thing. It could be or it could not be readily apparent to one, but to another person it would be readily apparent.

I think the definition "recognized hazard" comes nearer to identifying it as something that would be recognized by all people—not just readily apparent to an expert in that particular field.

A minute ago I wanted to mention something in regard to the recording of injuries and deaths. I believe there was mention of 14 000 deaths, and there were approximately 2.2 million time-loss injuries which resulted in some degree of permanent disability. These figures encompass everybody from the truckdriver who is involved in a road accident to a person who takes a guard off a machine and puts his hand in it.

There could be the best possible safety standards on a machine, or there could be the best possible air pollution controls in a plant, and perhaps economic pressure, or perhaps carelessness or indifference, would cause someone to take the guard off, leave the door open, or leave the filter off, which would permit the working condition over which he has control as an employee.

The employer has given him the facilities to make this place safe, but the employee has control over the area, and he permits it to deteriorate and to become an unsafe working area.

I do not know how we are ever going to stop this. It is a common practice, carelessness creeps into a job, and indifference to safety.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield there?

Mr. SAXBE. I yield.

Mr. WILLIAMS of New Jersey. Employees must also comply with the requirements of the act.

Mr. SAXBE. I know.

Mr. WILLIAMS of New Jersey. I wonder if this would be a convenient place for me to ask a question of the Senator.

Mr. SAXBE. Yes.

Mr. WILLIAMS of New Jersey. First, as I understand the parliamentary situation, a motion was made to take the bill up, and that is the motion before the Senate; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WILLIAMS of New Jersey. I have been listening attentively and with great interest. It seems to me that we are now getting into the merits and demerits of the legislation. I wonder if it would not be better I ask the Senator from Ohio, to deal with the motion, and have the bill before us, rather than getting into the merits of the bill in this fashion.

Mr. SAXBE. Yes; I recognize we are getting into the merits of the bill, but what I am doing by getting into the merits of the bill is calling attention, as the Senator from Kentucky said, to the many facets that are involved in this bill.

I do not think we should proceed, in the dying days of this part of the session, to take up a bill of the magnitude that we have here. I voted to get it out of committee; and I shall vote to pass the bill. I think it is a step in the right direction. The Senator and I are, there is no question about it, head on about the provision that he wishes to place under the Secretary of Labor, and I think it could best be handled under an independent board.

I compliment the Senator from New Jersey and the Senator from Texas (Mr. Yarborough) on recognizing the merits of some of the amendments that they accepted in committee. The Senator recognized the merit of these amendments and accepted them.

Mr. WILLIAMS of New Jersey. Those are minor matters, though, put into the bill by committee action. Certainly the question of the National Institute of Occupational Health and Safety is a major matter.

Mr. SAXBE. Oh, yes.

Mr. WILLIAMS of New Jersey. And the whole study of workmen's compensation was very much aided by the senior Senator from New York (Mr. Javits), who has worked most assiduously and with great wisdom on this bill.

Mr. SAXBE. Yes; and his staff has done a tremendous job, of which I am well aware.

Mr. WILLIAMS of New Jersey. The Senator mentioned the Senator from New York and his staff. To do him credit, he chose a wise and able staff, and directs them with consonant wisdom.

Mr. SAXBE. That is quite true. My attitude is simply this: We had an opportunity last week to get to this bill. I was prepared to offer amendments and to talk on it. Instead, even after it was disclosed that there were not the necessary votes on the equal rights amendment, we have still spent this time on that.

I think now that we are down in the last minutes, that I want to tell, and I want it to be in the Record for people to read tomorrow morning, why I do not believe we should vote and make this important determination with 70 or fewer Senators in Washington. I also point out that the House of Representatives is not going to act, that nothing will be gained; that the temperament of the application of this bill is such that we have got 2- and 3-year gaps, and therefore the things I am talking about are background reasons why we should not undertake consideration of this bill at the present time.

I will agree and go along and insist on immediate consideration when we come back here on the 15th or the 16th, and I believe that we can get it passed and to the President, who, I am informed, is most eager to get this legislation, well before our final adjournment for the year.

So that is the attitude that I have on this matter at the present time. But I was speaking of the difficulty in accumulating statistics. We can come up with many different figures that point out that the industrial area is an extremely dangerous area, but at the same time the man who gets up and goes to work at the factory is often going into a safer environment than the housewife who stays home and does her housework. We know that there are hazards associated with all types

of activities, and it has been pointed out repeatedly that the home is indeed a dangerous place.

However, we still have to make every effort to make the place of employment not only as safe as possible, but also a place where the effectiveness is not impaired, the work is not impaired, by fear of dangerous fumes or accidents: but, of course, the man who is the casualty of the automobile wreck, where he was observing all the standards and was driving with a company car, and was killed by a drunken hit-skip driver, is still a casualty that goes down as one of our great business and industrial casualties. So we have to temper all this.

One of the areas that has been suggested as an area of harassment is the part where any employee, when he believes that a dangerous situation exists, can serve notice and require the presence of an inspector. While this has been modified by later amendment in the committee, nevertheless there exists an area for harassment at a time of union difficulties or negotiation and one that has no place in health and safety practices within a place of employment.

We cannot be detracted by any other interest, of either the union or the employer, from our primary purpose of saving lives and preventing injury to employees.

If the employer would want to make conditions so unfavorable that his plant would be closed down and he would be saved from unemployment compensation, this has been taken care of in this bill. He would not benefit by such type of actions, and that part is very good. At the same time, I think we should fully discuss the position of the employee who wishes to take advantage of the opportunity to harass the employer by a series of complaints on safety standards that would affect the continued operation of the plant.

I should like to explain some of the nomenclature that is used in this measure at the present time and in my discussion today.

When I talk about "plant," when I talk about "factory," and when I talk about "mill," my remarks are also to apply to all the other businesses that are going to come under this measure. Many of them would be outside activities where there is limited amount of machinery but exposure to other safety hazards.

In my State, the risk factor for workmen's compensation is at its greatest in two areas—farming and quarrying. Farming, which one would think would be a relatively safe operation, is one of the most hazardous. Why? Because an individual is out there without an employer to tell him to put the guard on the machine, without an employer to tell him to keep away from the moving machine, without an employer to tell him to do all the things which the employer tells him to do makes him do in a plant. So farming is a very high risk in workmen's compensation.

In talking about plant, factory, and so forth, the place of employment could be the cab of a truck, the place of employment could be a private automobile, or the place of employment could be that of one who moves around from one place to another, such as an installer in a home or in a factory. All these are covered under this measure.

Mr. President (Mr. Cook), when we talk about the factory, we are not just limiting ourselves to thinking about a man who stands there and works on a great press or another piece of machinery, or who works in a kiln or in a part-producing factory.

If we first accept that the general duty of the employer is to provide a place that is safe and free from recognized hazards or, as in the substitute bill, readily apparent hazards, the next step, of course, is to define these rules. We come down to a point that is going to be of great moment and an issue we are finally going to have to decide: Who determines just what is a hazard and how to protect from it? This seems to me to go to the very depth of our individual and collective concern in government and its place in lives of people and the States in which they live.

If the Secretary of Labor, advised by panels, is going to be the one to do this, I think we have to recognize the advantages and recognize the shortcomings. The Secretary of Labor, as an individual, it is true, is going to be freer of the pressures, perhaps, that would come from a board that would be selected as most boards are somebody from the union, somebody from the employers, somebody as a public member, as it is called, although I never have been able to determine just exactly what that is.

But there will be people who are extremely liberal in regard to safety legislation and those who are extremely conservative. The use of those words is difficult, because "liberal" means one who wants very tight and very restrictive legislation; whereas, the more conservative person might say "We don't need that tight a restriction."

In a panel, you are going to get people from both ends of the spectrum, and then you are supposed to get public members. If you have five, you would have two of employer, two of employee or union and one public member. It would mean that you would have a great deal of pull and haul, and it would be difficult to work with and control, as all such boards are.

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OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. SAXBE. Mr. President, I should like to return to the business that we were discussing, which concerns the question of whether we should proceed to hear the health and safety bill at this time.

AMENDMENTS NOS. 1053 THROUGH 1060

Mr. DOMINICK. Mr. President, will the Senator yield to me?

Mr. SAXBE. I yield.

Mr. DOMINICK. Mr. President, I should like to have the Senator yield, without losing his right to the floor, for the purpose of a unanimous-consent request.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOMINICK. Mr. President, I have before me some eight amendments, together with a printed statement and a brief for each of those eight amendments, with respect to the bill which is now pending before the Senate, or which has been moved to be pending before the Senate. I ask unanimous consent that the amendments be printed together with the explanatory text on each one of them.

The ACTING PRESIDENT pro tempore. The amendments will be received and printed and will lie on the table.

Calendar No. 1300

91ST CONGRESS
2D SESSION**S. 2193**

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1970

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. DOMINICK to S. 2193, a bill to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, viz:

1 On page 35, beginning with line 23, strike out down
2 through line 9 on page 43 and insert in lieu thereof the
3 following:

4 "OCCUPATIONAL SAFETY AND HEALTH STANDARDS

5 "SEC. 6. (a) The National Occupational Safety and
6 Health Board established under section 8 of this Act is
7 authorized to promulgate rules prescribing occupational

Amdt. No. 1053

1 safety and health standards in accordance with sections 556
2 and 557 of title 5, United States Code.

3 “(b) Without regard to the provisions of sections 553,
4 556, and 557, title 5, United States Code, the Board shall,
5 as soon as practicable, but in no event later than three years
6 after the date of enactment of this Act, by rule promulgate
7 as an occupational safety and health standard, any national
8 consensus standard or any established Federal standard, un-
9 less it determines that the promulgation of such a standard
10 as an occupational safety and health standard would not
11 result in improved safety or health for affected employees.
12 In the event of conflict among such standards, the Board
13 shall promulgate the standard which assures the greatest
14 protection of the safety or health of the affected employees.
15 Such national consensus standard or established Federal
16 standard shall take effect immediately upon publication and
17 remain in effect until superseded by a rule promulgated pur-
18 suant to subsection (a) of this section.

19 “(c) (1) Whenever the Board promulgates any stand-
20 ard, makes any rule, order, decision, grants and exemption,
21 or extension of time, it shall include a statement of the
22 reasons for such action, and such statement shall be pub-
23 lished in the Federal Register; and

24 “(2) Whenever a rule issued by the Board differs sub-
25 stantially from an existing national consensus standard, the

1 Board shall include in the rule issued a statement of the
2 reasons why the rule as adopted will better effectuate the
3 purposes of this Act than the national consensus standard.

4 " (d) Any agency may participate in the rulemaking
5 under this section.

6 " (e) The Secretary of Labor (with respect to safety
7 issues) or the Secretary of Health, Education, and Welfare
8 (with respect to health issues) may submit a request to the
9 Board at any time to establish or modify occupational safety
10 and health standards indicated in the request. Within sixty
11 days from the receipt of the request, the Board shall com-
12 mence proceedings under this section.

13 " (f) Any interested person may also submit a request
14 in writing to the Board at any time to establish or modify
15 occupational safety and health standards. The Board shall
16 give due consideration to such request and may commence
17 proceedings under this section on the basis of such request.

18 " (g) If, prior to the publication of the rule, an inter-
19 ested person or agency which submitted written data, views,
20 or arguments and such person or agency shows to the satis-
21 faction of the Board that additions may materially affect the
22 result of the rulemaking procedure and that there were
23 reasonable grounds for failure to adduce such additions
24 earlier, the Board may receive and consider such additions.

25 " (h) In determining the priority for establishing stand-

ards under this section, the Board shall give due regard to the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces, or work environments. The Board shall also give due regard to the recommendations of the Secretary and the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

“(i) (1) The Board shall provide without regard to requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if it determines (A) that employees are exposed to grave danger from exposure to substances determined to be toxic or from new hazards resulting from the introduction of new processes, and (B) that such emergency standard is necessary to protect employees from such danger.

“(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

“(3) Upon publication of such standard in the Federal Register the Board shall commence a hearing in accordance with sections 556 and 557 of title 5, United States Code, and the standard as published shall also serve as a proposed rule for the hearing. The Board shall promulgate a

1 standard under this paragraph no later than six months
2 after publication of the emergency temporary standard as
3 provided in paragraph (2) of this subsection.

4 “(j) (1) Whenever the Board upon the basis of information submitted to it in writing by an interested person (including a representative of an organization of employers or employees, or a nationally recognized standards-producing organization) or by the Secretary or the Secretary of Health, Education, and Welfare, a State or a political subdivision of a State, or on the basis of information otherwise available to it, determines that a rule should be prescribed under subsection (a) of this section, the Board may appoint an advisory committee as provided for in section 7 (b) of this Act, which shall submit recommendations to the Board regarding the rule to be prescribed which will carry out the purposes of this Act, which recommendations shall be published by the Board in the Federal Register, either as part of a subsequent notice of proposed rulemaking or separately. The recommendations of an advisory committee shall be submitted to the Board within two hundred and seventy days from its appointment, or within such longer or shorter period as may be prescribed by the Board, but in no event may the Board prescribe a period which is longer than one year and three months.

1 “(2) After the submission of such recommendations,
2 the Board shall, as soon as practicable and in any event
3 within four months, schedule and give notice of a hearing
4 on the recommendations of the advisory committee and
5 any other relevant subjects and issues. In the event that
6 the advisory committee fails to submit recommendations
7 within two hundred and seventy days from its appointment
8 (or such longer or shorter period as the Board has pre-
9 scribed) the Board shall make a proposal relevant to the
10 purpose for which the advisory committee was appointed,
11 and shall within four months schedule and give notice of
12 hearing thereon. In either case, notice of the time, place,
13 subjects, and issues of any such hearing shall be published
14 in the Federal Register thirty days prior to the hearing
15 and shall contain the recommendations of the advisory
16 committee or the proposal made in absence of such recom-
17 mendation. Prior to the hearing, interested persons shall be
18 afforded an opportunity to submit comments upon any
19 recommendations of the advisory committee or other pro-
20 posal. Only persons who have submitted such comments
21 shall have a right at such hearing to submit oral arguments,
22 but nothing herein shall be deemed to prevent any person
23 from submitting written evidence, data, views, or argu-
24 ments.

25 “(k) The Board shall within sixty days (where an

1 advisory committee is utilized) or one hundred and twenty
2 days (where no advisory committee is utilized) after com-
3 pletion of the hearing held pursuant to section 6 (e) issue
4 a rule promulgating, modifying, or revoking an occupational
5 safety and health standard or make a determination that a
6 rule should not be issued. Such a rule may contain a provi-
7 sion delaying its effective date for such period (not in excess
8 of ninety days) as the Board determines may be appropriate
9 to insure that affected employers are given an opportunity
10 to familiarize themselves and their employees with the re-
11 quirements of the standard.

12 “(1) Any affected employer may apply to the Board
13 for a rule or order for an exemption from the requirements
14 of section 5 (a) (2) of this Act. Affected employees shall be
15 given notice by the employer of each such application and an
16 opportunity to participate in a hearing. The Board shall issue
17 such rule or order if it determines on the record, after an
18 opportunity for an inspection and a hearing, that the pro-
19 ponent of the exemption has demonstrated by a preponder-
20 ance of the evidence that the conditions, practices, means,
21 methods, operations, or processes used or proposed to be used
22 by an employer will provide employment and places of em-
23 ployment to his employees which are as safe and healthful as
24 those which would prevail if he complied with the standard.
25 The rule or order so issued shall prescribe the conditions, the

1 employer must maintain, and the practices, means, methods,
2 operations, and processes which he must adopt and utilize to
3 the extent they differ from the standard in question. Such a
4 rule or order may be modified or revoked upon application by
5 an employer, employees, or by the Board on its own motion
6 in the manner prescribed for its issuance at any time after six
7 months after its issuance.

8 “(m) Standards promulgated under this section shall
9 prescribe the posting of such labels or warnings as are neces-
10 sary to apprise employees of the nature and extent of haz-
11 ards and of the suggested methods of avoiding or ameliorating
12 them.”

13 On page 43, beginning with line 23, strike out through
14 line 6 on page 45, and insert in lieu thereof the following:

15 “(b) An advisory committee which may be utilized by
16 the Board in its standard-setting functions under section 6
17 of this Act shall consist of not more than fifteen members and
18 shall include as a member one or more designees of the
19 Secretary of Health, Education, and Welfare, and also as a
20 member one or more designees of the Secretary of Labor and
21 shall include among its members an equal number of persons
22 qualified by experience and affiliation to present the view-
23 point of the employers involved, and of persons similarly
24 qualified to present the viewpoint of the workers involved, as
25 well as one or more representatives of health and safety

1 agencies of the States. An advisory committee may also in-
2 clude such other persons as the Board may appoint who are
3 qualified by knowledge and experience to make a useful con-
4 tribution to the work of such committee, including one or
5 more representatives of professional organizations of tech-
6 nicians or professionals specializing in occupational safety or
7 health, and one or more representatives of nationally recog-
8 nized standards-producing organizations, but the number of
9 persons so appointed to any advisory committee shall not
10 exceed the number appointed to such committee as represent-
11 atives of Federal and State agencies. Persons appointed to
12 advisory committees from private life shall be compensated
13 in the same manner as consultants or experts under section
14 7 (b) of the Act. The Board shall pay to any State which is
15 the employer of a member of such committee who is a repre-
16 sentative of the health or safety agency of that State, reim-
17 bursement sufficient to cover the actual cost to the State
18 resulting from such representative's membership on such
19 committee. Any meeting of such committee shall be open to
20 the public and an accurate record shall be kept and made
21 available to the public. No member of such committee
22 (other than representatives of employers and employees)
23 shall have an economic interest in any proposed rule."

24 On page 33 between lines 12 and 13, insert the follow-
25 ing:

1 “(i) The term ‘Board’ means the National Occupa-
2 tional Safety and Health Board established under section 8
3 of this Act.”

4 On page 46 between lines 15 and 16, insert the follow-
5 ing:

6 “NATIONAL OCCUPATIONAL SAFETY AND HEALTH BOARD

7 “SEC. 8. (a) The National Occupational Safety and
8 Health Board is hereby established. The Board shall be com-
9 posed of five members, having a background either by rea-
10 son of previous training, education, or experience in the field
11 of occupational safety or health. Members shall be appointed
12 by the President, by and with the consent of the Senate,
13 and shall serve at the pleasure of the President. One of
14 the five members may be designated at any time by the
15 President to serve as Chairman of the Board.

16 “(1) Section 5314 of title 5, United States Code, is
17 amended by adding at the end thereof the following:

18 ““(92) Members, National Occupational Safety and
19 Health Board’.”

20 “(c) The principal office of the Board shall be in the
21 District of Columbia. The Board shall have an official seal
22 which shall be judicially noticed and which shall be pre-
23 served in the custody of the Secretary of the Board.

24 “(d) The Chairman of the Board shall, without regard

1 to the civil service laws, appoint and prescribe the duties of
2 a Secretary of the Board.

3 " (e) The Chairman shall be responsible on behalf of
4 the Board for the administrative operations of the Board,
5 and shall appoint such other officers, hearing examiners,
6 agents, attorneys, and employees as are deemed necessary
7 and to fix their compensation in accordance with the pro-
8 visions of title 5, United States Code.

9 " (f) Three members of the Board shall constitute a
10 quorum.

11 " (g) The Board is authorized to employ experts, ad-
12 visers, and consultants or organizations thereof as authorized
13 by section 3109 of title 5, United States Code, and allow
14 them while away from their homes or regular places of
15 business, travel expenses (including per diem in lieu of
16 subsistence) as authorized by section 5703 (b) of title 5,
17 United States Code, for persons in the Government service
18 employed intermittently, while so employed.

19 " (h) To carry out its functions under this Act, the
20 Board is authorized to issue subpoenas for the attendance
21 and testimony of witnesses and the production of relevant
22 papers, books, and documents and administer oaths. Wit-
23 nesses summoned before the Board shall be paid the same

1 fees and mileage that are paid witnesses in the courts of the
2 United States.

3 “(i) The Board may order testimony to be taken by
4 deposition in any proceeding pending before it at any stage
5 of such proceeding. Reasonable notice must first be given
6 in writing by the Board or by the party or his attorney of
7 record, which notice shall state the name of the witness and
8 the time and place of the taking of his deposition. Any
9 person may be compelled to appear and depose, and to
10 produce books, papers, or documents, in the same manner
11 as witnesses may be compelled to appear and testify and
12 produce like documentary evidence before the Board, as
13 provided in subsection (j) of this section. Witnesses whose
14 depositions are taken under this subsection, and the persons
15 taking such depositions, shall be entitled to the same fees as
16 are paid for like services in the courts of the United States.

17 “(j) In the case of contumacy by, or refusal to obey a
18 subpoena served upon any person under this section, the Fed-
19 eral district court for any district in which such person is
20 found or resides or transacts business, upon application by
21 the United States, and after notice to such person and hear-
22 ing, shall have jurisdiction to issue an order requiring such
23 person to appear and produce documents before the Board,
24 or both; and any failure to obey such order of the court may
25 be punished by such court as a contempt thereof.

1 “(k) The Board is authorized to make such rules as are
2 necessary for the orderly transaction of its proceedings.”

3 On page 46, line 17, strike out “SEC. 8” and insert in
4 lieu thereof “SEC. 8A”.

5 On page 51, line 20, strike out “8 (c)” and insert in lieu
6 thereof “8A (c)”.

7 On page 62, line 19, strike out “8 (c)” and insert in lieu
8 thereof “8A (c)”.

9 On page 63, line 15, strike out “8 (c)” and insert in lieu
10 thereof “8A (c)”.

11 On page 66, line 5, strike out “8” and insert in lieu
12 thereof “8A”.

13 On page 67, lines 10 and 20, strike out “8” wherever
14 it appears and insert in lieu thereof each time “8A”.

The explanations, presented by Mr. DOMINICK, are as follows:

AMENDMENT NO. 1053

Amendment No. 1053 would establish a separate, independent "Occupational Safety and Health Board" with responsibility for developing occupational safety and health standards. The Board would be a top-echelon body, composed of five members appointed by the President who would designate the Chairman from among the Board members. A background in the field of occupational safety and health would be required for all of the Board members.

The responsibility for developing occupational safety and health standards involves increasingly technical and complex problems requiring professional expertise and competence. An independent Board, whose members would be competent professional experts is, I believe, essential to the effective operation of an occupational safety and health program of the scope contemplated in the bill we are considering.

The separate Board, through its procedures will provide a wide range of judgment required for developing the diverse and varying standards to be applied for the first time on a national scale and on a multi-industry basis.

The job safety and health field is not only wide-ranging, but it involves several Departments of the Federal Government, two of these—HEW and Labor—extensively.

Health has always been centered in HEW; safety in the Labor Department.

I believe it is highly important to make sure no gaps exist between the safety and health areas of our Federal program; it is important to assure that a reasonably uniform level of effort is achieved with both, and important to keep policy consistent between the two. By joining the safety and health features of the program into a cohesive Federal focus, the Board will serve a useful and essential purpose.

Setting up a separate Board with standards-setting powers, with the Labor Department exercising administrative functions also provides for a balanced governmental structure.

The establishment of this Board, Mr. Chairman, is the keystone of this legislation, not only because it provides a nexus between the responsibilities of the Labor Department and HEW, but because it is the principal means of breaking up the undesirable monopoly of functions which some of the members of this body are seeking to create in the Labor Department. The Board would distribute functions, Mr. Chairman, by placing the standards-setting function in the new Board and the function of administering the Act in the Secretary of Labor.

Mr. President, the fact that this legislation is concerned with working men and women is not a valid reason for placing the standard-setting function under the Labor Department. The National Mediation Board, the Federal Mediation and Conciliation Service, and the National Labor Relations Board, for example, are completely concerned with matters pertaining to labor. Nevertheless, these agencies are entirely independent of the Labor Department. So, Mr. President,

there is a great deal of precedent for this independent Board which my amendment would establish.

One more point, the members of the Board will not be appointed because they are Democrats or Republicans, pro-management or pro-labor. That sort of approach has unfortunately been too often followed in making appointments to Federal positions. The problems we seek to resolve in this legislation should be cast in political terms; they do not involve issues where there are deep policy differences. Quite the contrary, the problems are almost entirely technological and technical. The appointment of an independent Board whose members must be highly competent professionals in a field where the subject matter is wholly objective and lends itself to genuinely scientific and technical analysis, judgment, and decision, would create the utmost confidence in every segment of the American work community.

Calendar No. 1300

91ST CONGRESS
2D SESSION**S. 2193**

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1970

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. DOMINICK to S. 2193, a bill to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, viz:

- 1 On page 39, beginning with the word "The" on line 3,
- 2 strike out all through the word "life." on line 9;
- 3 On page 39, line 10, strike the word "such";
- 4 On page 39, lines 12 and 13, strike the words "the high-
- 5 est degree of";
- 6 On page 39, line 13, strike the words "the employee".
- 7 and in lieu thereof, insert "employees".

Amdt. No. 1054

- 1 On page 339, line 6, after "that" insert a comma and "to
- 2 the extent possible."

AMENDMENT NO. 1054

Amendment No. 1054 deletes the requirement in section 6(b)(5) that the Secretary will establish occupational safety and health standards which most adequately and feasibly assure to the extent possible that *no* employee will suffer *any* impairment of health or functional capacity, or diminished life expectancy even if the employee has regular exposure to the hazard dealt with by the standard for the period of his working life.

This requirement is inherently confusing and unrealistic. It could be read to require the Secretary to ban all occupations in which there remains *some* risk of injury, impaired health, or life expectancy. In the case of all occupations, it will be impossible to eliminate all risks to safety and health. Thus, the present criteria could, if literally applied, close every business in this nation. In addition, in many cases, the standard which might most "adequately" and "feasibly" assure the elimination of the danger would be the prohibition of the occupation itself.

If the provision is intended as no more than an admonition to the Secretary to do his duty, it seems unnecessary and could, if deemed advisable be included in the legislative history.

For similar reasons, the amendment deletes the words, "the highest degree of" on lines 12 and 13.

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S. 2193

IN THE SENATE OF THE UNITED STATES

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AMENDMENT

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- 1 On page 49, line 1, beginning with the word "Each",
- 2 strike out all through line 7.

Amdt. No. 1055

AMENDMENT NO. 1055

Reasons for Amendment No. 1055 to Section 8 to Eliminate Excessively Burdensome Employee Notification Requirements Relating to Exposure to Toxic or Harmful Agents:

Section 8(c)(3) now provides that each employer promptly notify any employee who has been or is being exposed to toxic materials or harmful agents in concentration or at levels in excess of those prescribed by an applicable standard. It further requires that the employer inform any such employee of the corrective action being taken. These requirements would apply regardless of the length of the exposure, the degree to which the concentration exceeded applicable standards, or how long ago the exposure occurred.

The proposed amendment would eliminate these employee notification requirements. They could place an impossible burden on the employer, since they would apparently apply to all those employees who had some exposure to excessive concentrations of these harmful agents in the indefinite past. Moreover, in the case of employees with limited exposure to these substances, there may be no countervailing employee interest justifying the imposition of the requirements.

Furthermore, this provision indirectly requires excessive employer monitoring of his entire operation to determine toxicity, and further, imposes upon him an unrealistic notice requirement. The Act anticipates enforcement by the Secretary of Labor. Let us rely upon that reasoned approach and not take the unrealistic step of trying to require an employer to be his own policeman, judge and jury.

Calendar No. 1300

U. S. CONGRESS
76th Session

S. 2193

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1970

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. DOMINICK to S. 2193, a bill to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, viz:

1 On page 49, strike out lines 15 through 24, and in lieu
2 thereof, insert the following:

3 “(e) In conducting any inspection under this section,
4 the Secretary's representative shall meet and consult with a
5 reasonable number of affected employees and any authorized
6 employee representative at such reasonable times as will

Amdt. No. 1056

1 not unduly interfere with the employees' work in order to
2 permit time to receive any information relating to occupa-
3 tional safety and health which such employees or their rep-
4 resentatives desire to furnish."

AMENDMENT NO. 1056

Reason for Amendment to Subsection 8(e) Relating to Employer-Employee "Walk-Around":

This amendment deletes the requirement that the Secretary must give the employer and authorized employee representatives an opportunity to accompany him while conducting inspections. Where there is no authorized employee representative, the inspector must consult with a reasonable number of employees.

The proposed amendment would substitute the requirement that the inspector, in conducting inspections, must meet and consult with a reasonable number of affected employees and any authorized employee representatives. The consultation should be at such times as will not unduly interfere with the employees' work.

The amendment is intended to restore proper balance to the inspection procedure. In connection with inspections, the Secretary should have the full benefit of the views of affected employees. The amendment, through its consultation requirement, assures that these views will be available to the Secretary. At the same time, the bill's procedures should provide for minimum disruptions to the inspector in the performance of his work and no undue interference with the conduct of the employer's business.

The mandatory "walk-around" provisions now in the bill could, under some circumstances, lead to "collective bargaining" sessions during the course of the inspection and could therefore interfere both with the inspection and the employer's operations. Whether employers or employee representatives accompany the inspector should be left to the inspector, as is provided in the substitute amendment.

Calendar No. 1300

91st CONGRESS
2D SESSION**S. 2193**

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1970

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. DOMINICK to S. 2193, a bill to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, viz:

- 1 On page 54, line 2, beginning with the words "or it",
- 2 strike out all through "unreasonable," on line 7;
- 3 On page 54, line 18, beginning with " , or" strike all
- 4 through "subsection," on line 19.

Amdt. No. 1057

AMENDMENT NO. 1057

Reasons for Amendment No. 1057 to Eliminate Employee Right to Obtain a Hearing on the Reasonableness of the Abatement Period Fixed in the Citation.

The provision for a hearing demanded by an employee on the reasonableness of the abatement period for a violation is an administrative step in the procedures of the Act that is cumbersome, renders meaningless the judgment of the Secretary, and is, again, based upon the unwarranted notion that the Secretary will not carry out the mandates of this Act.

Employees are not prohibited from communicating with the Secretary concerning an alleged violation either before the citation is issued or thereafter.

In determining the reasonableness of an abatement period the Secretary would, of course, consider all aspects of the matter including the interests of the employee. To require a hearing places an unwarranted burden upon the Secretary, for he will be required to not only justify his position, but will tie-up resources needed elsewhere to effectively administer the Act.

It should also be pointed out that this issue could be raised at the hearing resulting from an employer's contesting the citation.

Calendar No. 1300

91ST CONGRESS
2D SESSION**S. 2193**

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1970

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. DOMINICK to S. 2193, a bill to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, viz:

- 1 On page 71, line 19, beginning with "The Secretary"
- 2 strike out through line 25.

Amdt. No. 1058

AMENDMENT NO. 1058

Reasons for amendment No. 1058 to section 18(a)(2). Re S HEW's "tests" for establishing criteria to be used in promulgating standards.

Mr. President, my amendment would delete the requirement in section 18(a)(2) that the Secretary of HEW in developing criteria for the use in standard setting shall develop "such criteria which if applied will assure that no employee will suffer impaired health or functional capacities, or diminished life expectancy as a result of his work experience."

Such a requirement is simply unrealistic. This requirement is not qualified by the words *adequately* and *feasibly* as is a similar requirement for standards-setting in section 6(b)(5) of the Committee bill.

This requirement is not only unrealistic, it is confusing. What is meant by no impairment of Health or functional capacity? Simply being in a work environment where one is responsible for certain duties seems to me to produce in most people impaired health, and it certainly diminishes life expectancy to some extent.

These requirements are simply unrealistic and should be stricken.

The duty to set standards and produce criteria for standard-setting implies that the criteria and the standards will be as effective as possible; not that they will produce a perfect environment. No human effort can produce a perfect environment no matter how hard we try.

Calendar No. 1300

S. 2193

91st CONGRESS
2d Session

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1970

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. DOMINICK to S. 2193, a bill to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, viz:

1 On page 73, line 8, beginning with the word "He" strike
2 out through the period on line 15.

Amdt. No. 1059

AMENDMENT NO. 1059

Reasons for Amendment No. 1059 to Section 18 to allow discretion to the Secretary of HEW in handling request for testing potentially toxic effects.

Section 18 a (4) of S. 2193 requires studies and determinations by the Secretary of HEW concerning the toxicity of substances found in the workplace. As drafted, this paragraph contains provisions which would seriously interfere with the orderly conduct of these studies.

The paragraph requires the Secretary of Health, Education, and Welfare to publish and maintain a list of all substances used or found in the workplace and known to be potentially toxic, including the concentrations at which such toxicity is known to occur. The provision requires the Secretary of HEW to make a study of the toxicity of a substance when he is requested to do so by an employer or employee representative in writing and with reasonable particularity as to the grounds for the request. He must submit his determinations to employers and affected employees as soon as possible.

The provision requiring the Secretary to respond to all detailed written requests is unnecessary in view of the broad mandate given the Secretary under paragraph (4) to publish a list containing all known toxic substances. It is implicit in the duty to prepare such a list that if a request for a determination was received by the Secretary and there was a reasonable basis for it, the Secretary would make every effort, consistent with his available resources and good administrative practice, to make such a determination.

In addition, this "command performance" provision, plus the requirement that the Secretary of HEW furnish all employers and affected employees with his determinations, would place an unreasonable administrative burden on the Department of HEW. The task of performing studies at the request of *any* employee or employee representative is obviously an overwhelming one. Moreover, the problem of identifying and notifying all employees who may be affected by each determination is a massive, if not impossible, task.

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91ST CONGRESS
2^D SESSION**S. 2193**

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1970

Ordered to lie on the table and to be printed

AMENDMENT

Intended to be proposed by Mr. DOMINICK to S. 2193, a bill to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, viz:

1 On page 35, strike out lines 12 through 15 and insert
2 in lieu thereof the following:

3 “ (1) shall furnish to each of his employees employ-
4 ment and a place of employment which are free from
5 any hazards which are readily apparent and are causing
6 or are likely to cause death or serious physical harm to
7 his employees, and”.

Amdt. No. 1060

AMENDMENT NO. 1060

Reasons for amendment No. 1060 to make general duty requirement more specific.

We would be remiss in our duty, Mr. President, if any worker were killed or seriously injured on the job because he was unprotected under this bill owing to the fact that no *specific* safety or health standard covered the circumstances which caused his injury. Therefore, in addition to requiring employers to comply with the specific standards promulgated by the Board, the amendment I am offering would require each employer to furnish his employees employment and a place of employment *which are free from any hazards which are readily apparent and are causing or are likely to cause death or serious physical harm to his employees.*

The general duty embodied in this amendment, which applies only to dangerous situations *readily apparent* to an employer is vastly preferable to the more ambiguous mandate now in the Committee bill.

There are essentially two features which make the substitute's general duty require-more clearly spelled out (and would thus be understandable to employers and inspectors) to include specifically those situations which "are causing or likely to cause death or serious physical harm to employees, the Committee bill places no similar limitation on the type of hazard contemplated;" and (2) the term "readily apparent" connotes that the hazard must be easily discoverable by a reasonably prudent man under similar circumstances, whereas the Committee bill uses the phrase "recognized hazards" which is rather ambiguous and open-ended, e.g. "recognized" by whom? a concerned and prudent employer, a safety engineer, a trained doctor, a scientist, etc.?

In summary, Mr President, the offensive feature of the Committee bill's present general requirement is that it is essentially unfair to employers to require compliance with a vague mandate applied to highly complex industrial circumstances. Under such a requirement, the employer will simply have no way of knowing whether he is complying with the law or not, nor will the inspector have any concrete criteria, either statutory or administrative, to guide him in finding a violation.

The major thrust of the Act contemplates the establishment of specific standards. The existence of a vague general requirement increases the risk that its enforcement will form the basis for the law's enforcement to the detriment of the setting of specified standards.

AMENDMENT NO. 1061

Mr JAYNES. Mr. President, will the Senator yield to me for the same purpose?

Mr. SAXBE. I yield.

Mr JAYNES. Mr. President, I send to the desk an amendment to the Occupational Health and Safety Act which deals with enforcement of the act. It is essentially the compromise that I offered in committee which was unhappily and unfortunately rejected and has brought us so much trouble, I think, because it was rejected. I think that we could find some way of composing our differences and producing a bill with the aid of this particular method of compromise.

I ask unanimous consent that the amendment be printed in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

Calendar No. 1300

91ST CONGRESS
2D SESSION**S. 2193**

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1970

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AMENDMENTS

Intended to be proposed by Mr. JAVITS to S. 2193, a bill to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, viz:

1 On page 52, beginning on line 10, strike all down through
2 line 11 on page 59 and insert in lieu thereof the following:

3 "PROCEDURES FOR ENFORCEMENT

4 "SEC. 10. (a) If, after an inspection or investigation,
5 the Secretary issues a citation under section 9 (a), he shall
6 within a reasonable time after the termination of such inspec-

Amdt. No. 1061

tion or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 14 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time the citation and the assessment, as proposed, shall be deemed as final order of the Panel and not subject to review by any court or agency, except upon request of an employee or representative of employees pursuant to subsection (c).

"(b) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Panel in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalty), or has failed to comply with an order issued under section 14 (b), the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 14 by reason of such failure, and

1 that the employer has fifteen working days within which to
2 notify the Secretary that he wishes to contest the Secretary's
3 notification or the proposed assessment of penalty. If, within
4 fifteen working days from the receipt of notification issued
5 by the Secretary, the employer fails to notify the Secretary
6 that he intends to contest the notification or proposed assess-
7 ment of penalty, the notification and assessment, as proposed,
8 shall be deemed a final order of the Panel and not subject
9 to review by any court or agency.

10 " (c) If an employer notifies the Secretary that he in-
11 tends to contest a citation issued under section 9 (a) or noti-
12 fication issued under section 10 (a) or (b) , or if, within fif-
13 teen working days of the issuance of a citation under section
14 9 (a) , any employee or representative of employees files a
15 notice with the Secretary alleging that the period of time fixed
16 in the citation for the abatement of the violation is unreason-
17 able, the Secretary shall immediately advise the Panel of such
18 notification or determination, and the Panel shall afford an
19 opportunity for a hearing (in accordance with section 554
20 of title 5, United States Code, but without regard to subsec-
21 tion (a) (3) of such section). The Panel shall thereafter
22 issue an order, based on findings of fact, affirming, modify-
23 ing, or vacating the Secretary's citation or proposed pen-
24 alty, or directing other appropriate relief, and such order
25 shall become final fifteen days after its issuance. The rules of

1 procedure prescribed by the Panel shall provide affected
2 employees or representatives of affected employees an oppor-
3 tunity to participate as parties to hearings under this sub-
4 section.

5 “(d) Any person adversely affected or aggrieved by an
6 order of the Panel issued under subsection (c) or (f) may
7 obtain a review of such order in any United States court of
8 appeals for the circuit in which the violation is alleged to
9 have occurred or where the employer has its principal office,
10 or in the Court of Appeals for the District of Columbia Cir-
11 cuit, by filing in such court within sixty days following the
12 issuance of such order a written petition praying that the
13 order be modified or set aside. A copy of such petition shall
14 be forthwith transmitted by the clerk of the court to the
15 Panel and to the other parties, and thereupon the Panel shall
16 file in the court the record in the proceeding as provided in
17 section 2112 of title 28, United States Code. Upon such
18 filing, the court shall have jurisdiction of the proceeding and
19 of the question determined therein, and shall have power to
20 grant such temporary relief or restraining order as it deems
21 just and proper, and to make and enter upon the pleadings,
22 testimony, and proceedings, set forth in such record a decree
23 affirming, modifying, or setting aside in whole or in part,
24 the order of the Panel and enforcing the same to the extent
25 that such order is affirmed or modified. The commence-

1 ment of proceedings under this subsection shall not, unless
2 ordered by the court, operate as a stay of the order of the
3 Panel. No objection that has not been urged before the Panel
4 shall be considered by the court, unless the failure or neglect
5 to urge such objection shall be excused because of extraordi-
6 nary circumstances. The findings of the Panel with respect
7 to questions of fact, if supported by substantial evidence on
8 the record considered as a whole, shall be conclusive. If any
9 party shall apply to the court for leave to adduce additional
10 evidence and shall show to the satisfaction of the court that
11 such additional evidence is material and that there were
12 reasonable grounds for the failure to adduce such evidence in
13 the hearing before the Panel, the court may order such addi-
14 tional evidence to be taken before the Panel and to be made
15 a part of the record. The Panel may modify its findings as
16 to the facts, or make new findings, by reason of additional
17 evidence so taken and filed, and it shall file such modified
18 or new findings, which findings with respect to questions of
19 fact, if supported by substantial evidence on the record con-
20 sidered as a whole, shall be conclusive, and its recommenda-
21 tions, if any, for the modification or setting aside of its origi-
22 nal order. Upon the filing of the record with it, the juris-
23 diction of the court shall be exclusive and its judgment and
24 decree shall be final, except that the same shall be subject

1 to review by the Supreme Court of the United States, as
2 provided in section 1254 of title 28, United States Code.
3 Petitions filed under this subsection shall be heard expedi-
4 tiously.

5 "(c) The Secretary may also obtain review or enforce-
6 ment of any final order of the Panel by filing a petition for
7 such relief in the court of appeals for the circuit in which
8 the violation occurred or in which the employer has its
9 principal office, and the provisions of subsection (d) shall
10 govern such proceedings to the extent applicable. If no
11 petition for review, as provided in subsection (d), is filed
12 within sixty days after service of the Panel's order, the
13 Panel's findings of fact and order shall be conclusive in con-
14 nection with any petition for enforcement, which is filed
15 by the Secretary after the expiration of such sixty-day
16 period. In any such case, as well as in the case of a non-
17 contested citation or notification by the Secretary which
18 has become a final order of the Panel under subsection (a)
19 or (b), the clerk of the court, unless otherwise ordered by
20 the court, shall forthwith enter a decree carrying the order
21 and shall transmit a copy of such decree to the Secretary
22 and the employee named in the petition. In any enforcement
23 proceeding brought to enforce a decree of a court of appeals
24 entered pursuant to this subsection or subsection (d), the

1 court of appeals may assess the penalties provided in section
2 14, in addition to invoking any other available remedies.

3 “ (f) No person shall discharge or in any other way dis-
4 criminate against an employee because of the exercise by
5 such employee on behalf of himself or others of any right
6 afforded by this Act, including action to determine the
7 extent of employee exposure to hazardous substances, or for
8 leaving a workplace upon the order of the Secretary or a
9 district court issued pursuant to section 11. Any employee
10 who believes that he has been discharged or otherwise dis-
11 criminated against by any person in violation of this sub-
12 section may, within thirty days after such violation occurs,
13 file a complaint with the Secretary alleging such discrim-
14 ination. Upon receipt of such complaint, the Secretary shall
15 cause such investigation to be made as he deems appropriate.
16 If upon such investigation, the Secretary determines that
17 the provisions of this subsection have been violated, he shall
18 so notify the Panel and the Panel shall afford an oppor-
19 tunity for a hearing as provided in subsection (c). If the
20 Panel finds that such violation did occur, it shall order such
21 affirmative action as may be appropriate, including, but not
22 limited to, the rehiring or reinstatement of the employee to
23 his former position with back pay.

1 "THE OCCUPATIONAL SAFETY AND HEALTH
2 REVIEW PANEL

3 "SEC. 11. (a) The Occupational Safety and Health Re-
4 view Panel is hereby established. The Panel shall be com-
5 posed of three members who shall be appointed by the Presi-
6 dent, by and with the advice and consent of the Senate, from
7 among persons who by reason of training, education, or ex-
8 perience are qualified to carry out the functions of the Panel
9 under this Act. The President shall designate one of the mem-
10 bers of the Panel to serve as Chairman.

11 "(b) The terms of members of the Panel shall be five
12 years except that (1) the members of the Panel first taking
13 office shall serve, as designated by the President at the time
14 of appointment, one for a term of three years, one for a term
15 of four years, and one for a term of five years, and (2) a
16 vacancy caused by the death, resignation, or removal of a
17 member prior to the expiration of the term for which he was
18 appointed shall be filled only for the remainder of such un-
19 expired term. A member of the Panel may be removed by
20 the President for inefficiency, neglect of duty, or malfeasance
21 in office.

22 "(c) Section 5315 of title 5, United States Code, is
23 amended by adding at the end thereof the following new
24 paragraph:

1 “(94) Members, Occupational Safety and Health
2 Review Panel’

3 “(d) The principal office of the Panel shall be in the Dis-
4 trict of Columbia. Whenever the Panel deems that the con-
5 venience of the public or of the parties may be promoted, or
6 delay or expense may be minimized, it may hold hearings
7 or conduct other proceedings at any other place.

8 “(e) The Chairman shall be responsible on behalf of the
9 Panel for the administrative operations of the Panel and
10 shall appoint such hearing examiners and other employees
11 as he deems necessary to assist in the performance of the
12 Panel’s functions and to fix their compensation in accordance
13 with the provisions of chapter 51 and subchapter III of
14 chapter 53 of title 5, United States Code, relating to clas-
15 sification and General Schedule pay rates: *Provided*, That
16 assignment, removal and compensation of hearing examiners
17 shall be in accordance with sections 3105, 3344, 5362, and
18 7521 of title 5, United States Code.

19 “(f) For the purpose of carrying out its functions under
20 this Act, two members of the Panel shall constitute a quorum
21 and official action can be taken only on the affirmative vote
22 of at least two members.

23 “(g) Every official act of the Panel shall be entered of
24 record, and its hearings and records shall be open to the

1 public. The Panel is authorized to make such rules as are
2 necessary for the orderly transaction of its proceedings, which
3 shall provide for adequate notice of hearings to all parties.

4 “(h) The Panel may order testimony to be taken by
5 deposition in any proceedings pending before it at any state
6 of such proceeding. Any person may be compelled to ap-
7 pear and depose, and to produce books, papers, or documents,
8 in the same manner as witnesses may be compelled to appear
9 and testify and produce like documentary evidence before the
10 Panel. Witnesses whose depositions are taken under this sub-
11 section, and the persons taking such depositions, shall be
12 entitled to the same fees as are paid for like services in the
13 courts of the United States.

14 “(i) For the purpose of any proceeding before the Panel,
15 the provisions of section 11 of the National Labor Relations
16 Act (29 U.S.C. 161) are hereby made applicable to the juris-
17 diction and powers of the Panel.

18 “(j) A hearing examiner appointed by the Panel shall
19 hear, and make a determination upon, any proceeding insti-
20 tuted before the Panel and any motion in connection there-
21 with, assigned to such hearing examiner by the Chairman of
22 the Panel, and shall make a report of any such determination
23 which constitutes his final disposition of the proceedings. The
24 report of the hearing examiner shall become the final order

1 of the Panel within thirty days after such report by the hear-
2 ing examiner, unless within such period any Panel member
3 has directed that such report shall be reviewed by the Panel."

4 On page 63, strike line 1 and insert in lieu thereof: "the
5 date of the final order of the panel in the case of any review
6 proceeding under section".

Mr. JAVITS. Mr. President, this amendment deals only with enforcement, not with standards, which are left in the hands of the Secretary of Labor. Under the amendment an independent panel of three members, appointed for staggered 5-year terms, with the advice and consent of the Senate, would be established to hear and determine enforcement cases under the act. The members of the panel would be appointed solely on the basis of their professional qualifications.

There are several reasons why enforcement through such a panel is to be preferred to enforcement by the Secretary, as provided in the original bill:

First, under the procedures established by the amendment, speed of enforcement would be greatly increased. In most contested cases, between 6 months and 2 years would be saved under the provisions which provide for true self-enforcing orders and discretionary review of trial examiner decisions.

Under the committee bill, no enforceable order to correct a violation would issue until the completion of all administrative and judicial review proceedings. This would involve, at a minimum in a contested case: First, hearings by a trial examiner; second, mandatory review of the decision by the Secretary or his designee; and third, review by a court of appeals. It is doubtful that this process could be completed in less than 18 months—2 years would be a more realistic estimate—in a seriously contested case.

Under my amendment, an enforceable order would issue at the end of the administrative review stage, rather than after judicial review—unless the court of appeals issued a stay. Furthermore, the months in many cases by making the administrative review stage itself would be shortened by 3 to 6 months in many cases by making review by the panel of trial examiners' decisions discretionary. If review were denied, the trial examiners' decision would automatically become the final order of the panel and enforceable as such.

Second, hearing and determination of enforcement cases by an independent panel more closely accords with traditional notions of due process than would hearing and determination by the Secretary. In the latter case the Secretary is essentially acting as prosecutor and judge. Any finding by the Secretary in favor of a respondent would be essentially a repudiation by the Secretary of his own Department's employees. While this type of enforcement has been used in connection with other statutes, is contemplated by the Administrative Procedures Act, and is not jurisdictionally defective on due process grounds, the awkward mechanics it imposes upon heads of departments who wish to exercise their adjudicatory power personally in order to preserve due process has not generally been appreciated. What happens is that one official of the Department—such as the Deputy Solicitor—will take the position of prosecutor and another official—such as the Solicitor—will take the position of a neutral in order to advise the Secretary.

More important, because of the awkwardness of this procedure and the heavy burden of personally reviewing hundreds of enforcement cases, it is highly likely that the Secretary of Labor will not even exercise his power under the committee bill personally, but will delegate it to a panel of officials within the Department. That is precisely what the Secretary of Interior has done under the Coal Mine Health and Safety Act of 1969. The net result will be enforcement by a

nel anyway, but not one which is independent, and without the benefit of the shortened procedures which my amendment would provide. These considerations, it seems to me, outweigh any possible benefits which might be gained from the better "coordination which would allegedly occur if the adjudicatory power, as well as the prosecutorial standards setting powers were given to the Secretary. Such coordination as is necessary would seem just as readily attainable with a panel as with the Secretary. It is the prosecutors upon whom this burden will primarily fall and under either approach they will be under the Secretary's control.

In short, the adjudicatory scheme of the committee bill can be made to work, and due process can be preserved under it, but the independent panel approach would do the same job faster, preserve due process more easily, and thereby instill much more confidence in the whole program in workers and businessmen alike.

The ACTING PRESIDENT pro tempore. The amendment will be received, printed, and will lie on the table.

Mr. JAVITS. Mr. President, if no other Senator wishes recognition, I have some business to transact.

Mr. SAXBE. Mr. President, I refuse to yield the floor at the present time.

The ACTING PRESIDENT pro tempore. The Senator from Ohio still has the floor.

Mr. SAXBE. Mr. President, I have been requested by the Senator from Rhode Island to yield specifically to speak upon the bill on a question of whether to take it under consideration. I ask unanimous consent to yield to him, at his request, solely for the purpose of speaking for approximately 2 minutes on this specific matter, without losing my right to the floor.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

TIME TO PROTECT WORKINGMAN

Mr. PELL. Mr. President, two issues have dominated the American political consciousness this past year—a never-ending war in Vietnam and the so-called unheeded voices of the silent majority, the blue-collar workers.

We have all deplored the deaths of over 50,000 Americans in Vietnam. We have all stated that we now hear the voices of the silent majority.

Mr. President, I think if we could hear those voices today on the Senate floor, they would tell us to act now upon the measure we have before us. For it is a tragic irony that those supposed supporters of the Vietnam war have suffered more deaths in the factories than our young men have suffered in the jungles of Vietnam.

Former Secretary of Labor, George Shultz, has stated that an average of 14,500 workers die in industrial accidents each year.

I believe it has long past the time to end the needless killings in Vietnam and I also believe just as strongly that it has also long past the time to stop the needless deaths in our factories.

Mr. President, the Senate Labor and Public Welfare Committee has ordered many long hours in the development of the occupational health and safety bill before the Senate today. I believe it represents a balanced consideration of the health interests of the Workers and the

economic interests of the employers. I urge that we vote upon it without amendment forthwith.

I thank the Senator for yielding.

OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. SAXBE. Mr. President, before the rhubarb, the Senator from Rhode Island had raised some interesting points concerning whether we should consider the occupational health and safety bill at this time.

Some of his points are extremely well taken but in his entire discussion he did not once mention our points of difference which I maintain are to such a degree that we cannot begin to handle it with the present time limitation and I might say the mood of the Senate.

The mood of the Senate is extremely important at such a time. One of our more senior Senators told me the other day that he had never seen the mood of the Senate worse for consideration of important legislation than now. He has been here 25 years.

Therefore I oppose this on the ground that to proceed to this legislation with a minimum number of Senators here and with the limited knowledge that the Members have the limited patience that they have and the recognition by I think all of us that fatigue makes cowards of us all, we are not going to be able to turn out an occupational health and safety bill.

I am also forced to say at this time that the very thought that the Senate in its present mood would go to the mat and try to vote on this bill is just abhorrent to me. I do not think there is any way in which we could be objective or in which we could consider the great body of evidence we heard on this bill.

The Senator from New Jersey has pointed out the many hearings that were had on this matter. We started last fall and continued through the fall into the early spring. I think the first hearing was in September and the last one was in April.

During that period of time, we had people of diverse interests give numerous diverse recommendations. A lot of them we were able to reconcile. However, we were not able to reconcile this particular one. That is the one where we cannot decide, at least to our mutual satisfaction, whether we should have a board, whether we should have a Secretary of Labor with an advisory commission, or whether we should have a board and a panel.

This, it seems to me, is one of the deepest schisms that we have had on any bill that has come out of our committee.

Mr. SCOTT. Mr. President, will the Senator from Ohio yield for a question without losing his right to the floor?

Mr. SAXBE. I yield.

Mr. SCOTT. Mr. President, I ask the Senator if he would be willing to yield the floor if the objective which is currently being sought by the National Grange could be achieved by his so consenting.

The National Grange did send a telegram for the information of the Senator so that he can answer this question.

The telegram reads:

The National Grange although not entirely satisfied with conference report on farm bill finds report acceptable. We are opposed to postponing action until after election as we feel this would endanger future of all farm programs by forcing

Department of Agriculture to return to act of 1938 and by increasing possibility of a lower limitations on payments. We therefore urge that you be on the floor on Tuesday, October 13, to vote for conference report.

Mr. President, if this entirely praiseworthy effort of the National Grange on behalf of many thousands of the farmers of America could be achieved by virtue of the Senator's yielding the floor, would the Senator be willing to do that so that the messenger from the House who still lingers without—that is, without recognition and without instructions as to what to do next—is without a lot of things—could enter the Chamber. The only thing he is with is a message. Under those circumstances, would the Senator from Ohio yield the floor in order that that objective might be attained?

Mr. SAXBE. I would under those circumstances.

Mr. BYRD of West Virginia. Mr. President, would the Senator from Ohio yield to the Senator from West Virginia just to allow the Senator from West Virginia to ask a question of the Senator from Pennsylvania?

Mr. SAXBE. I would so yield.

Mr. BYRD of West Virginia. Mr. President, would the Senator from Pennsylvania come to the middle of the aisle and look through the door to see if the messenger is indeed outside the doors?

Mr. SCOTT. Well, if the messenger from the House has left during our participation in this dialog, it is because the messenger has been discouraged by someone whose purposes in chasing the messenger rather precipitately back to the other coequal body has motivations which totally escape me.

All I am trying to do is to help the farmers get a farm bill. The Members on this side are willing to cooperate.

While I looked out the door, I must assume that Sheridan is more than 20 miles away, but I am sure that he would return pronto and promptly if encouragement were given by the majority leadership.

I again urge that the majority reconsider that the mood of this Chamber is evidently not to let any other bill be acted on until it can consider the farm bill.

Mr. BYRD of West Virginia. Mr. President, the Senator has answered my question and the record has been made clear. The messenger from the House does not stand outside the door.

Mr. MILLER. Mr. President, would the Senator from Ohio yield to the Senator from Iowa for the purpose of making a unanimous-consent request?

Mr. SAXBE. Mr. President, I yield to the Senator from Iowa to make that request without losing my right to the floor.

Mr. MILLER. Mr. President, for the purpose of ascertaining where the purpose of this body lies, I ask unanimous consent that the Chair be directed to advise the House messenger that the Senate doors are ready and waiting for him to come into the Chamber.

Mr. BYRD of West Virginia. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. SAXBE. Mr. President, I want to speak at this time concerning another provision of the bill.

Mr. BYRD of West Virginia. Mr. President, I ask for the regular order. I ask that the Senator from Ohio not yield except for questions or for serious unanimous-consent requests.

Mr. MILLER. Mr. President, I think I am entitled to make a comment. I believe that the acting majority leader's comment about

serious unanimous-consent requests was directed to the Senator from Iowa. There is nothing more serious than to get the farm bill here.

The ACTING PRESIDENT pro tempore. The Senator from Iowa has the floor. He can only yield by yielding the floor except by unanimous-consent request.

MR. HANSEN. Mr. President, would the Senator from Ohio yield for a question.

MR. SAXBE. I yield for a question only.

MR. HANSEN. Mr. President, I would like to say, though I have not been here without interruption all afternoon, that it occurs to me, having listened to the dialog and the questions that have been asked, that apparently a messenger tried to present to the Senate a message from the other body.

The ACTING PRESIDENT pro tempore. The Senator was recognized to ask a question.

MR. HANSEN. Mr. President, I am asking a question. May I continue with my question?

The ACTING PRESIDENT pro tempore. Very well.

MR. HANSEN. Mr. President, I gather this is the situation. I would like to ask my distinguished colleague from Ohio if it is his opinion that the bearer of a message from the other body did indeed try to present that message and that the messenger from the other body was probably accosted by someone from the other side of the aisle and was informed in quite explicit terms, either orally or by actions that carried a very clear implication as to the wishes of the majority that he would not be welcome, that that message would not be received with any appreciation by the majority party. Is this the feeling that the Senator from Ohio has?

MR. SAXBE. Mr. President, I am so informed.

MR. HANSEN. Mr. President, I would like further to ask my distinguished friend, the Senator from Ohio, if he shares my opinion that this is a rather sad commentary on this body and if he views with dismay the callous disregard for the reception of a message from the other body, and if he looks with displeasure and with sore misgivings upon the motivation that would prompt one of our distinguished colleagues from the other side of the aisle to take such action. Does my friend, the Senator from Ohio, share my feeling?

MR. SAXBE. Yes. And I deplore such actions. But I might point out further that it is in keeping with the matter that I am discussing here that with the present mood of the Senate, as indicated by the questions and replies and the heated words we have had, that this is not the time to involve ourselves with serious legislation that will affect every employer and employee in this country. This is not the time that we should try to put together a major piece of legislation that we are all interested in, that the administration has indicated their interest in, and that would affect 90 percent of the working men in this country.

I think that to be fair and completely objective we should put this off until such time as we can give it the type of treatment to which it is entitled. As I have said repeatedly, I would be willing to make this the first order of business when we return on November 16.

Now I will admit that as one of the cosponsors of the coal mine safety bill I had great hopes that we were striking a real blow for safety in this country. I am distressed by what the Senator from

Kentucky has pointed out to me that as a result of the stringent regulations against the nongassy mines we have driven the miners into the gassy mines where the danger is greater than it was in the original place of employment.

Mr. WILLIAMS of New Jersey. I have two questions. What was the effective date of the coal mine safety bill? My second question is, during that entire period have we had a Director of the Bureau of Mines? Those are my two questions.

Mr. SAXBE. I will answer those questions. The effective date was not the thing that drove them from the gassy mines. There was an economic fact involved. They had to make a decision whether to stay there and get the approved equipment or to make a further expenditure. It was in the future but they made the decision to go out of there and as a result we have the increase in strip mining.

As to the appointment to the head of this department, I do not question the fact that this was certainly a mistake. We should have had this man.

As the Senator knows, there was an abortive attempt to get a man. He did not turn out to be satisfactory and after all this delay we finally have someone.

On that same score, there is the job of getting inspectors. You do not put an ad in the newspapers and go out and hire inspectors.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield further?

Mr. SAXBE. I yield.

Mr. WILLIAMS of New Jersey. The Senator is well aware, I am sure, that there were 300 men who passed the examination to become inspectors and they were not placed on the rolls as inspectors. This bill authorized the money well in advance, an unprecedented action by the Senate in anticipating, authorizing, appropriating, and the men passed the examination and were not put on.

The committee of which I am chairman went to Pennsylvania and held field hearings. That was one of the matters that dramatically brought to the problem greater attention and it had something to do with putting men on the rolls as inspectors.

Mr. SAXBE. Yet in this bill that the Senator wants brought up the Senator wants to give sole responsibility to the same Department of Labor in the industrial health and safety bill which you propose to bring up.

Mr. WILLIAMS of New Jersey. The Senator does not mean "the same department." It is the Department of Labor.

Mr. SAXBE. The Department of Labor.

Mr. WILLIAMS of New Jersey. Yes.

Mr. SAXBE. I suggest that with all their other problems that the setting of the standards and hearing the cases should be separate from that job of the Secretary of Labor.

Mr. WILLIAMS of New Jersey. This is a matter of merit and can be reached by amendments. We have a committee bill before us, if it is taken up. That would go to the merits. That is why we are trying to get the bill before the Senate, for the amending or perfecting process.

Mr. SAXBE. I am aware of that and I say the amending or perfecting process cannot be carried on in the atmosphere that pervades the Senate at the present time. We have all this matter here about the

agriculture bill. We never heard of it until this afternoon when we started.

MR. WILLIAMS of New Jersey. I have a few questions myself about the farm bill. When is winter wheat planted, by the way?

MR. SAXBE. In the winter, I suppose. [Laughter.]

MR. DOMINICK. Mr. President, will the Senator yield on that point?

MR. SAXBE. No. I will tell the Senator exactly when it is planted. It is planted just after the fly date. If the Senator does not know what the fly date is, I will explain it. It is the date set by the Department of Agriculture when the planting would be free of infestation by the Haitian fly, and this is usually, in our State, around the first of October. In other States it goes clear up to the first of December.

MR. WILLIAMS of New Jersey. What does this farm bill do? Does it extend credit for planting winter wheat?

MR. SAXBE. No. The acreage control established under this bill applies to that wheat that is planted. It is planted in accordance with a program that is approved.

MR. WILLIAMS of New Jersey. It seems to me this body knows a great deal more about accidents on the job than the fly date and the period for planting winter wheat. Let us get back to industrial health and safety. Everybody knows about this, as one of the major matters. There have been three Presidential messages urging us to take it up and bring standards of safety to the working place.

MR. SAXBE. I know the Presidential message urges a similar bill. The bill that the Senator from New York (Mr. Javits) introduced was the administration bill, and many elements of it are in the committee reported bill. I am well aware of that.

MR. DOMINICK. Mr. President, will the Senator yield?

MR. SAXBE. I yield on this same matter.

MR. DOMINICK. Is it not true that the House already indicated it will not take up the occupational health and safety bill until November and hence, any consideration by us at this point does not speed up passage of the bill at all? Is that true?

MR. SAXBE. That is true.

MR. DOMINICK. Is it not also true that even after the bill is enacted, under the committee bill it would take 3 years before the health and safety standards are promulgated; it has to be done by 2 years under the committee bill before the rules and standards are set up; and hence before the health and safety standards can go fully into effect, it will be 2 years after the date of enactment?

MR. SAXBE. That is right.

MR. WILLIAMS of New Jersey. Mr. President, will the Senator yield?

MR. DOMINICK. So the urgency is not here as it is in the farm bill.

MR. WILLIAMS of New Jersey. Mr. President, I wish to point out that in the committee bill on page 36, at the top, it is stated.

The Secretary shall, as soon as practical—

The ACTING PRESIDENT pro tempore. The Senator from West Virginia has called for the regular order.

MR. WILLIAMS of New Jersey. What is the regular order?

The ACTING PRESIDENT pro tempore. The Senator from Ohio can yield only for a question.

MR. SAXBE. Another question of serious discussion is the question of who has the right to demand an inspection and what is the response to

this inspection. If an employee writes a letter and says that there is a safety problem in the plant where he works, or in an area of the plant, he can request the Secretary to make an inspection. On the face of it, it looks like this is a very good provision because it gives the man an opportunity to identify a safety hazard and to know that there will be a response, because it is also required that if they feel that imminent danger is present, they have to make this inspection.

The problem is with the shortage of inspectors, and there will never be enough. They will have to have one in every plant of any size. How in the world is the enforcement arm going to plan their inspections so that the plants are all covered, at the same time having an available source of inspectors who can respond to complaints?

Imagine also the question that is raised as to harassment. If the employee wants to be a harassing agent, of course he can send in a complaint every day, and then the Secretary would have to determine whether it is genuine. In other words, is he crying wolf and, therefore, not entitled to an inspector, or is it genuine? But it would pose a terrific problem for the Secretary to determine he should send a man in there.

Suppose he did not send a man in there and serious injury resulted from an accident that resulted from faulty equipment, or from failure to follow proper safety practices.

These are areas of discussion.

While I personally favor the response required in the committee bill, when a man puts in writing that safety hazards exist and that the Secretary, or a regional officer of the Labor Department, feel they are of sufficient interest to assign an inspector, I think that is good. I think he should go. It is going to take more inspectors. But I think this matter should be fully discussed. I doubt if we could even clear up that point in the short time we are going to have available in the morning.

Mr. DOMINICK. Mr. President, will the Senator yield for a question?

Mr. SAXBE. I yield.

Mr. DOMINICK. Is it not also true that if an inspection is conducted on a complaint by the employee, and then the inspector, through the Secretary, decides that there really was not a violation, or at least that it was so de minimis that they really did not have to worry about it, at that point the employee is entitled, under the committee bill, to demand and require that the Secretary of Labor issue a written report, and as to every complaint which he sent, issue a citation.

Mr. SAXBE. I am informed that that is the way it would operate.

Mr. DOMINICK. It would seem to me—and would it not so seem to the Senator from Ohio?—that this also opens the door for not only an enormous amount of paperwork, but a good deal of harassment, if there were a real labor-employer series of bitter disagreements going on from time to time in a particular plant or in a particular business.

Mr. SAXBE. Yes; and this could be an element that would prevent a settlement of disputes.

Mr. DOMINICK. And I think would create animosity between the parties.

I gather, from listening to the Senator from Ohio, that he would agree with the Senator from Colorado that the best method of getting health and safety practices into effect is through one of cooperation and not one of antagonism between the groups.

Mr. SAXBE. As I pointed out in my remarks, safety, to be effective, must be a closely coordinated, cooperative effort between the management of a plant and the employees that are under it. The elements that create safety hazards have to be removed or identified or somehow made less harmful to those people who come into that area.

At the present time, if the Senator has observed in the plants that he has gone into, there are a great deal of visual aids for the use of the employees. The first sign one sees when he walks into a plant is that "We have had so many accident-free days in this plant," and the other slogans that are current, such as, "Safety is everybody's business," that are plastered all over the place. That is the beginning of the education. In other words, the employee must first be made safety conscious. Then, when he goes into his place of work, come the protective clothes, the steel-toed shoes, the hard hats, for women the hair nets or other covers to keep them from being caught in a machine, the discrimination against the outlawing, in fact, of loose clothing that might become caught in moving machinery.

These are the things that are done even before the man gets to his place of employment. He is warned. He is educated to some degree. He is clothed in such a manner as to be in as safe as possible a condition when he gets to his job.

Then, as he goes to his job in the modern plants, the light and air are all controlled. In the less modern plants, a great deal is still left to be desired. If he is working on a machine that creates particles, they have a vacuum fitted on there to take those off. If it creates fumes, or he is working over tanks of volatile material, say in plating, those fumes are carefully monitored at all times, and taken away.

These, again, are things that have been worked out over a long period of time, and this is what our standards are going to be on.

Then he is given rest periods. He is given a special area to smoke in. He is protected against falls, because falls are the greatest source of injury in any plant. It is not the machinery or equipment he gets into; it is a simple fall. He steps on something on the floor, falls, and has a resulting back injury.

Mr. DOMINICK. Mr. President, will the Senator yield for another series of questions?

Mr. SAXBE. I yield.

Mr. DOMINICK. Is the Senator acquainted with the mining industry, and the road construction connected with it?

Mr. SAXBE. To some degree, in quarrying.

Mr. DOMINICK. In our area—and I do not know whether the Senator has been there, I can ask him a question at the end if that would help—in uranium mining in particular, we find that, in exploration for and finding of uranium, you always find it in the most unlikely places.

One company I was connected with many years ago found that there was a necessity to build a road from the top down, because you could not get down to the bottom any other way. This meant you had to carve out your road out of a 4,200-foot sheer wall, and the only safety mechanism we could figure was to buy each of the cat drivers a parachute harness, which we did. Then we drove the parachute into the side of the cliff. We took out extra insurance on them, so that, if the road went away, they would be hung by a piton into the cliff by a parachute.

There are not many other standards I can think of that would take care of that situation.

Mr. WILLIAMS of New Jersey. What is the question?

Mr. DOMINICK. But this was interstate commerce. We had only one man lose his hat, and he was saved by this mechanism. So we were pretty lucky.

The ACTING PRESIDENT pro tempore. The Senator from Ohio yielded for a question. Is the Senator from Colorado about to propound a question?

Mr. DOMINICK. Yes, Is it not true that it would be extremely difficult, in situations of this kind, to find any kind of health and safety regulation which would really meet the criterion in here which says that you have got to put them in so that there is no risk to people?

Mr. SAXBE. It would have to be done in that manner; there is no question about it.

I am better acquainted with industrial plants than I am with this type of operation; but in these plants, where a man goes to work, the light, the air, all of those qualities that can be controlled are usually controlled by union agreement, or by safety engineers of the plant, who make a time study and a safety study at the same time of the operation.

Some machines are quite adaptable to safety devices. With your large brakes that press metal, obviously, you have to have a dual control to handle that shear—that is, you have to have both hands on a control so you cannot get one hand in that machine at the time you are pushing those buttons. These are prescribed, usually, by outside safety regulations as well as the plant's regulations; and the other developments on some of these machines are indeed ingenious. They have a great many machines that I have seen and am aware of that have actual leather cuffs attached to chains, so that, when that press comes down, an eccentric drags that hand out of there; if the workman puts that cuff on, there is no way he can get that hand under that press.

This is particularly true in the machinery that develops high-speed production, because with high-speed production, many safety devices are necessary because the time is all-important. You just cannot grab a blank piece of steel and put it in there and forge it, and grab it out of there; it has got to be done with some degree of efficiency.

One of the elements that keeps stirring into this and stirring into it is, of course, the piecework incentive system. There have been more injuries created from piecework incentives or time incentives, in a coal mine, than almost any other factor. It makes the man forget; he gets a little greedy and forgets his well-learned safety standards. He shoots a little more powder than he should, or he takes that cuff off so he can get his hands in and out of there a little faster, and first thing you know, he has a calamity. But these things are all done at the present time in practically all industrial States, and in all major plants.

In what is sometimes referred to as an alley shop—and I certainly do not mean that all alley shops are of inferior planning or design, but most of them are—you have a number of machines jammed together without proper planning, proper time study, or proper working conditions, and usually you have no safety minded person on duty there all the time.

Again, you may have a one- or two-man operation, and under this condition, this man tends to try to do more, because, he says, "Well, I am not subject to these safety regulations; that is for the hired help, and I am the employer," and he and his son and a couple of others work there.

That is one thing about this bill: There is no question that he would be just as covered here as he should be, and in many cases is not covered, today.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield for a question?

Mr. SAXBE. I yield.

Mr. WILLIAMS of New Jersey. Let me say it is appreciated that the Senator is so familiar with safety practices in industry.

I wonder if the Senator realizes that in the application of standards, there is a difference between the committee bill and the substitute. Does the Senator know that in the establishment, promulgation of early standards is of three types under the committee bill. First, national consensus standards; second, already existing Federal standards; and third—and this is important—standards also promulgated prior to the date of enactment of this act, nor by national organizations, but by a nonconsensus method? These are referred to as proprietary standards, and the question is, Does the Senator realize that that third, or the proprietary standard provision, is not included in the substitute bill?

Mr. SAXBE. Yes; and, as I say, that is one of the reasons I would rather amend the committee bill than necessarily accept the substitute bill.

But one other thing I think the Senator will agree with, too, in there: Regardless of whether it is in the committee bill or the substitute bill, we are going to have to accept these consensus standards and proprietary standards wholesale, to start with, because we will not have the real opportunity to go into each State and start from scratch.

Mr. WILLIAMS of New Jersey. If the Senator will permit, I would certainly agree, and that is why there will not be a 2-year delay in effective standards after the enactment of the occupational health and safety bill.

Mr. SAXBE. But there will be a delay in establishing what they are going to be, according to the advisory committee to the Secretary of Labor.

Mr. WILLIAMS of New Jersey. This is not for the early standards. This is for the promulgation of later standards.

Mr. SAXBE. Of the temporary standards.

Mr. WILLIAMS of New Jersey. What the Secretary would do would be to accept standards that exist now in the three categories, and they would be applicable at an early date after the effective date of the bill.

Mr. SAXBE. Where we are going to have our trouble in enforcement of this is in the alley shop, the small foundry, and places of that kind. It will also occur in the areas where people are not confined in a regular place of employment.

As the Senator knows, service industries are the fastest growing industries in this country, and probably the one area where there is less safety control next to farming and some of those that probably will not be covered. It is one of the greatest areas, because a man and

his helper go out on a truck in the morning and they go to a home as plumbers, and this is going to be difficult.

But I think we are going to find that most of them are covered under the interpretation of being in interstate commerce, especially when they go out and fix the plumbing at a hotel engaged in interstate commerce, at a factory engaged in making interstate products, and so forth. For the first time, there is going to be a requirement for them to have definite safety standards, and it is going to come as quite a shock I think because I do not think they realize at this time that they are going to be covered.

We have talked around and about the question of why should we not take this bill up until after we get back. I think—and I will say again my reason for opposing it—that the attendance is such that we are not going to get an opportunity to present it fairly to all the Members of the Senate, that the depth of the concern is more casual than I would like to see at this time.

Mr. WILLIAMS of New Jersey. May I ask the Senator at that point what he means as to a depth of concern?

Mr. SAXBE. Of the membership of the Senate. I think there would be much greater concern and more depth of concern if they had the time to spend on hearing the arguments involved.

I am always distressed, as I know the Senator is, that more Senators are not on the floor to hear arguments on a great many bills. But on this particular bill I have gone to Senator after Senator and I have said, "Do you know what is in this bill?" The reply has been, "No, I don't know what is in it."

I have then asked, "Do you know that it is going to affect this and this and this is going to be the result?" The reply has been, "No, I didn't know this."

Mr. WILLIAMS of New Jersey. If the Senator will yield, if that test were applied to everything, the farm bill, believe me, would not be p this year. We all know all the details of the farm bill.

Mr. BELLMON. Mr. President, will the Senator yield for a question?

Mr. SAXBE. I yield.

Mr. BELLMON. Mr. President, on page 32 of the bill, subsection 1), the term "employer" is defined. It says that the term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the U.S. Government or any State or political subdivision of a State.

My question is this: In the judgment of the Senator from Ohio, does this definition bring under the terms of this act all farmers who are employees? Farmers do engage in business that affects commerce. They produce wheat and corn.

Mr. SAXBE. As the Senator knows, this is a question that has not yet been determined. There are some cases—this is in regard to the minimum wage—in which a farmer engages in business such as the seed business in connection with his farm operation. There is no question that they are involved in interstate commerce, and have been so held.

Mr. BELLMON. This says nothing about interstate commerce. It says, "in business affecting commerce."

Mr. SAXBE. What I am saying is that this Federal bill can only be applied to the individual States by referring to those businesses engaged in interstate commerce. Businesses not engaged in interstate

commerce become fewer and fewer every year, and extremely few are left.

The cases on this arise because of the question of the minimum wage, which applies to any business in interstate commerce. The cases have said that a farmer who just runs a regular farm operation is not engaged in interstate commerce. But a farmer who is engaged in processing seed that moves in interstate commerce is involved and must pay the minimum wages, and therefore it would be the same interpretation that would put him under this bill. Then it would apply to the farmer, and it would apply to that operation. There is no specific exemption unless it is specifically granted.

Is that not correct?

MR. WILLIAMS of New Jersey. I believe it is correct.

I am advised that a case that does rather define employees in occupations affecting commerce arose out of a case in Ohio, in a prison, where the inmates were growing vegetables for use in the prison.

MR. SAXBE. That is correct.

MR. WILLIAMS of New Jersey. The question came up as to whether the Secretary of Agriculture's program had an effect here. It was found that it affected commerce. They were growing vegetables in the prison farm in Ohio and were eating it there; otherwise, they would have bought it.

MR. SAXBE. Not only that, but in that case the question was raised that they were also making shoes, clothing, and sheets, which they were selling to themselves—that is, the prison-made goods did not go on the market. But because they provided themselves, this stuff would have gone in.

So I think we have an ever-reducing group of employers who are not engaged in interstate commerce.

As the Senator will recall, the restaurants and hotels just came under it 4 or 5 years ago, by court decision. Hotels always held that they were not part of interstate commerce. Someone has a hotel and asks, "How am I involved in interstate commerce, in selling a meal and renting a bed?" He is told, "This man comes from Indiana and puts up in a hotel in Ohio, and therefore you are engaged in interstate commerce."

MR. BELLMON. Mr. President, if the Senator will yield further, suppose a hog farmer in Ohio fattens hogs and sends them across the State line, to Chicago, to be slaughtered. Is he in interstate commerce?

MR. SAXBE. That has yet to be decided, but I suppose that would be the next step.

MR. BELLMON. Even though, under the terms of the present court interpretation of the term "interstate commerce," such a farm might be exempted, at any time a court decision could change that. Is that correct?

MR. SAXBE. That is correct.

Frankly, the courts have leaned over backward to keep from bringing farms into this thing; not only farms but also other agricultural enterprises—nurseries. Nurseries now are taking advantage of this, because they are not under the Federal Wage and Hour Act; and I see that it will not be long before they will even lose this agricultural exemption, because nurseries are exploiting to some degree on the farm labor field. Competition has raised wages to the point that perhaps

it is not the issue it once was. Nevertheless, it is an area that I would guess would fall under this at some time in the future, not now.

Mr. BELLMON. If the Senator will yield, does the Senator know how many individual farmers there are in this country?

Mr. SAXBE. I have no idea. I could only guess.

Mr. BELLMON. There are several million.

Mr. SAXBE. This is correct.

Mr. BELLMON. How many inspectors would it take, under the terms of the proposed legislation, properly to supervise, say, 1 million farmers?

Mr. SAXBE. Well, of course, is there not a saying that when the number of employees in the Department of Agriculture exceed the number of farmers then they will have a cutoff? I would guess, if they employed the number of safety inspectors necessary, it would rapidly reach that number where Department of Agriculture employees and the safety inspectors would exceed the number of farmers.

I point out again to the Senator—he knows it as well as I—that one of the most unsafe places to work in this country is on the farm, because of lack of supervision and dangerous equipment. The Senator could find in his State of Oklahoma that the premium rate for workmen's compensation for farmers is as high as any other perilous occupation; that is, it is as high as pouring which is regarded as one of the most perilous of occupations. But farming is extremely high on the list. A farmer works with edge tools, which is always a safety problem; he works with machines, and he works with animals. Thus, he has three of the elements that always bring a great deal of hazard to anyone working with them.

There are other perilous occupations that show up in workmen's compensation, in the trades, such as the building trades and the steel workers. There are other perilous jobs, but none of them compares to the job of the farmer.

One of the good things about the bill, which I am hoping will survive, is the study required on workmen's compensation.

As an attorney general for the State of Ohio, I was a defender of the fund, which means that they had a board, an industrial commission that went into the matter of any injury. They made the case before the board, and the board gave an award as to the number of weeks they were entitled to and the benefits. They did not give lump-sum awards but they would say, "You are entitled to 5 weeks total disability and 50 weeks 20 percent disability."

Even though Ohio has one of the better systems, it is not a satisfactory way to handle it because in many instances the man would come in and say, "I want a lump sum settlement," and he would walk out with a thousand dollars or \$1,500 but would have a permanent disability and have no recourse to go back in there. Or a man would have a back injury and a 50-percent disability and he would get a lump sum payment for that disability, with no recourse to the fund again.

I am hoping that within the bill, when it becomes law, the study that is proposed will bring about a uniform system of workmen's compensation that will be as uniform as it can be. I do not doubt that we will have to weigh it, because a wage earner in New York perhaps earns more money than one in Alabama and necessarily, his benefit schedule would have to be greater. But I think that there

should be uniformity as to weighting. I think, although it is not directly related here, minimum compensation benefits should be uniform, with weighting for regional differences.

It is a sad thing to see some of our State prerogatives drifting away. Sometimes we begrudge them and declare that our State prerogatives are very dear to us, but when it comes to health and safety, workmen's compensation, and minimum compensation, we hate to see them used as trading stock in competition over location of businesses. To say to an employer in Ohio, "Come to Oklahoma where workmen's compensation is only 50 percent," or, "You do not have to have as much on safety," that is not the kind of thing we want. This bill would bring uniformity on that score.

I think that it has a great many good things in it and I hope that we pass it. I certainly will use my good offices to collect as many pledges of votes as I can for its passage.

As I have said many times during this afternoon, I suggest that we should give Senators an opportunity to approach this matter objectively, and that we should not do it under a time restriction, especially when we have so much legislation that is of such great importance.

I cannot help remarking on the attitude of the membership here, that it would make consideration most unpleasant. That is to be deplored, as all of us here recognize the value of harmony in a legislative body.

Mr. MILLER. Mr. President, will the Senator from Ohio yield so that I may make a parliamentary inquiry?

Mr. SAXBE. Mr. President, I yield.

Mr. BYRD of West Virginia. Mr. President, I ask for the regular order.

The ACTING PRESIDENT pro tempore. The regular order is called for.

Mr. SAXBE. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk called the roll and the following Senators answered to their names:

[No. 378 Leg.]

Allen
Bellmon
Byrd, W. Va.
Curtis

Dole
Dominick
Griffin
Mansfield

Miller
Proxmire
Saxbe
Williams, N.J.

The ACTING PRESIDENT pro tempore. A quorum is not present.

[From the Congressional Record—Senate, October 14, 1970]

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, before I put in a quorum call again, I am awaiting the arrival of the distinguished minority leader, who will have a letter from the President of the United States covering the farm bill conference report. After we are through with our colloquy, I think I should tell the distinguished Senator from Colorado and the distinguished Senator from Ohio that at that time it is my intention to once again, first, ask unanimous consent to take up S. 2193, the Occupational Safety and Health Act of 1970, and then, if that is declined, to move its consideration; and if we have the same situation as yesterday, to have a colloquy.

Mr. ALLOTT. Mr. President, it is my understanding that, somehow or other, the messenger from the House with the farm bill has gotten lost somewhere between the House of Representatives and the Senate.

Mr. MANSFIELD. He will be over some time this afternoon, I want to assure the Senator.

Mr. ALLOTT. I am advised that the House has passed on the omnibus crime bill. Is that correct?

Mr. MANSFIELD. Not that I know of. The Senate agreed yesterday to the amendments to the organized crime bill. The other one is a combination. I think the Senator is referring to the combination of five, the so-called omnibus crime bill, on which I do not think they have even gone to conference, nor do they anticipate doing so until after we return.

Mr. ALLOTT. Does the Senator know the present status of the drug bill?

Mr. MANSFIELD. I think that will be taken up. We are awaiting passage by the House now, so that the distinguished Senator from Arkansas (Mr. McClellan) can take it up, and hopefully we will do that this afternoon. But we are waiting for it to come over.

Mr. ALLOTT. I do not like to suggest such a thing, but in order that we can take care of these things, we could provide a guide for this messenger from the House, to assure that he arrives here in good shape. We do not want him to get lost for another 24 hours because we do not think any of us will be here.

Mr. MANSFIELD. No, we are still operating—we have not reached the stage of the no-knock—let me put it another way—enough said. [Laughter.]

Mr. ALLOTT. Mr. President, may I say this to the distinguished Senator. I do hope that we can take up these measures. I understand, even though I am not in sympathy with the situation surrounding the farm bill. I spoke very briefly about that yesterday as it affects the wheat farmers. The Senator from Montana is in about the same situation as I am on that. But may I suggest that it might be helpful to the Senate as a whole, if we do get some assurance of getting a report of approval on some of the House bills, that we take them up.

I can understand the feelings of the majority leader in wanting to call up the occupational health and safety bill. We were on that yesterday afternoon. It is now the last few hours of the session before adjournment. The distinguished majority leader knows as well as this Senator that there is a substitute bill on the desk to be offered, and that if that is not adopted there will be some 18 or 19 separate amendments to be considered.

Being a practical man, as he is, I wonder whether there is any really substantial reason why we should, at this late hour, waste time trying to do that, instead of just taking care of such bills as the House finally sends over here so, that we can adjourn, go home, and get about our business.

Mr. MANSFIELD. If I had some idea as to what Senators most interested in the bill had in mind, I would be in a better position to proceed. If it is a case of objecting to a unanimous consent request, as I am sure it will be, that is understandable. If it is a case of debating the occupational health and safety bill with the idea that it would not be taken up this afternoon, then I would not want to go through the rigamarole of that sort of charade. I do feel a little bit perturbed because, as I said yesterday, when I was approached by the Republican leadership last Tuesday or Wednesday not to take up the occupational health and safety bill on Thursday or Friday of last week because two Senators very much interested in the matter would not be in town.

I did so, assuming there would be no difficulty in bringing it up on the following Monday.

Well, I went out home over the weekend, and when I got back on Tuesday morning and read the Record, I found that there had been objection to taking it up on Monday.

We tried yesterday, but the unanimous-consent request was denied.

I thought that, after a certain amount of debate, a motion should be made to take it up, that it would be laid before the Senate and made the pending business, but we did not get quite that far. I am wondering what the situation would be today, because just as I intend to see to it that the conference report on the farm bill is taken up and passed, so do I intend to see to it that the occupational health and safety bill will be taken up and considered, because it is in an entirely different category from a conference report.

Mr. ALLOTT. My colleague, Senator DOMINICK, is one of those Senators who are very much interested in this particular bill —

Mr. MANSFIELD. Yes indeed.

Mr. ALLOTT. He is one of many Senators who are. He wants to ask the Senator to yield to him, but I think many colleagues who are interested in some amendments and, in fact, the substitute for the entire bill, are in the same category today as we were yesterday and on Monday that I used to be in with a certain man against whom I tried many cases. He had the most deft facility to prolong cases and infatuate with cross-examinations that went on sometimes for days until he finally was able to crowd me into a time corner.

These people are getting into a time corner here for proper consideration of the bill, and considering its significance, I really can not see, from my point of view, as an outsider to the committee, that there is any point now, because too many Senators are absent and we cannot get real consideration by the Senate at this time; so that I just respectfully suggest we take care of the business that is coming over from the

House, rather than go through what the Senator from Montana has just called a charade or a formalized proceeding in taking up the occupational health and safety bill.

Mr. MANSFIELD. The Senator has a point. I am seeking advice, counsel and information—

Mr. ALLOTT. I must yield to other Senators now.

Mr. DOMINICK. Mr. President, I was the one who objected yesterday to the unanimous-consent request. But I was not the one who objected on prior occasions.

Mr. MANSFIELD. That is correct.

Mr. DOMINICK. I will be forced to do it again today on the unanimous-consent request. I have talked with the Senator from Ohio, and I have talked with others who believe the same way I do, they would like to see debate on the motion to take up, as we did yesterday, at some length.

I say that for this reason, I think we would want to be advised as to what the plans are. They would be that way. Speaking briefly on the reason for it, the reason is that many Senators have left, even since yesterday. They have already left since this morning, to be truthful with the Senator. In addition, the House will not take this up until November. In addition to that, after the bill is finally enacted on one form or another, then the rules will have to be promulgated, so that it is not a matter of urgent necessity to have this bill passed immediately. I do however say to the majority leader, as I have said to the manager of the bill, the Senator from New Jersey (Mr. Williams), that we would have no objection to having it taken up immediately upon return after the adjournment.

Mr. MANSFIELD. I appreciate the candor of the Senator from Colorado. The air has been cleared. On the basis of what the distinguished Senator has said, I will not call up the health and safety bill this afternoon because I can see no definite results emanating therefrom. But it, along with the conference report on the farm bill, will be among the first orders of business and, of course, in comparison between the two, the farm bill has the preference, because of its status, and I would hope that both measures which seem to have become involved with one another, unfortunately, would be disposed of as rapidly as possible after our return.

Mr. DOMINICK. So far as I am concerned, I cannot speak for everyone, but when we come back, I would be willing to have a limitation of time on debate.

Mr. MANSFIELD. I understand. If the substitute fails, then there will be a number of amendments.

Mr. DOMINICK. One way or another. We might do the amendments first.

Mr. JAVITS. I have a suggestion. The farm bill is a conference report which can be called up even while another bill is pending. Could we not agree that it will become—not be laid before the Senate now—but will become the pending business on November 16?

Mr. MANSFIELD. Oh, yes, it will be, because it is my intention to continue the equal rights for women as the pending business when we come back, and operate on a two-shift basis so that the occupational health and safety bill will be on the second shift and, in the meantime, on the 16th of November, hopefully, the first day, we will take up the conference report on the farm bill.

Mr. JAVITS. Mr. President, could we have a unanimous-consent agreement that, on the two-shift operation, one shift will be equal rights and the other shift will be occupational health and safety? That would not intrude on the farm bill.

Mr. MANSFIELD. Mr. President, I do not think that we need a unanimous-consent agreement, because we have enough faith in one another.

Mr. SCOTT. Mr. President, we had better make legislative history here. I have no objection to that, regardless of how the amendments come out. I would be prepared to support, if I possibly could, and would expect to support the occupational health and safety bill.

I recall that the majority leader on one occasion said that the social security bill would probably be the pending business when we return.

Mr. MANSFIELD. It is not out of the committee. It has to be out of the committee first. Otherwise it would receive priority.

Mr. SCOTT. Mr. President, at this point it is likely that the farm bill will be considered on the second-shift basis.

Mr. MANSFIELD. No. The occupational health and safety bill will be.

UNANIMOUS-CONSENT AGREEMENT ON THE PENDING BUSINESS WHEN THE SENATE RECONVENES

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate returns in November the pending business be the equal rights amendments on the first shift, to be followed at or about 5 p.m. on the second shift by the occupational health and safety bill.

Mr. SCOTT. Mr. President, I have no objection. I gladly join in that request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, if at all possible, the Senate may consider the conference report on the farm bill on the first day of our return, Monday, November 16.

Mr. MILLER. Mr. President, with respect to the farm bill, I believe I heard the distinguished majority leader state earlier that the Senate had not yet adopted a no-knock provision. May I inquire whether the Senate has adopted a preventive detention provision.

Mr. MANSFIELD. Well put. I would not disagree.

Mr. President, I think that we should let the distinguished minority leader proceed. He has a very important message.

[From the Congressional Record—Senate, Nov. 16, 1970]

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 2193, Calendar No. 1300. I further ask unanimous consent that the unfinished business, House Joint Resolution 264, not be laid before the Senate at 2 o'clock, but be temporarily laid aside, and that it remain temporarily laid aside until disposition of S. 2193.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read the bill (S. 2193) by title, as follows:

(The text of the reported bill appears on p. 204.)

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will please call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that Mr. Blackwell, Mr. Nagle, and Mr. Elisburg of the staff of the Committee on Labor and Public Welfare be permitted to be present on the Senate floor during the debate on S. 2193, in addition to the four staff members normally provided for.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. WILLIAMS of New Jersey. Mr. President, at a time when the Nation's concern is understandably directed at the problems of our environment, it is particularly appropriate that we give specific attention to the crisis in the workplace environment—for this is a crisis as urgent as any confronting the Nation today.

The more than 14,500 workers who are killed by industrial accidents each year, represent an annual death toll exceeding that of the Vietnam war. By the most conservative count, close to 2½ million employees are disabled on the job each year—resulting in the loss of many more days of work than are caused by strikes.

In addition to the individual human tragedies involved, the economic impact of industrial deaths and disability is staggering:

Over \$1.5 billion are wasted in lost wages, and the annual loss to the gross national product is estimated to be over \$8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation benefits and medical expenses.

It is particularly disturbing to note that this picture represents a worsening trend, for the fact is that the number of disabling injuries per million man-hours worked is today 20 percent higher than in 1958. The knowledge that the industrial accident situation is deteriorating rather than improving underscores the need for action now.

In the field of occupational health, the view is particularly bleak, and, due to the lack of information and records, may well be considerably worse than we currently know.

Occupational diseases which first commanded attention at the beginning of the industrial revolution are still undermining the health of workers. Substantial numbers, even today, fall victim to ancient industrial poisons such as lead and mercury. Workers in the dusty trades still contract a variety of respiratory diseases. Other materials long in industrial use are only now being discovered to have toxic effects. In addition, technological advances and new processes in American industry have brought numerous new hazards to the workplace. Carcinogenic chemicals, lasers, ultrasonic energy, beryllium metal, epoxy resins, pesticides, among others, all present incipient threats to the health of workers. Indeed, new materials and processes are being introduced into industry at a much faster rate than the present meager resources of occupational health can keep up with. It is estimated that every 20 minutes a new and potentially toxic chemical is introduced into industry. New processes and new sources of industry present occupational health problems of unprecedented complexity.

New scientific knowledge points to hitherto unsuspected cause-and-effect relationships between occupational exposures and many of the so-called chronic diseases—cancer, respiratory ailments, allergies, heart disease, and others. The distinction between occupational and nonoccupational illnesses is growing increasingly difficult to define.

In 1966-67, the Surgeon General of the United States studied six metropolitan areas, examining 1,700 industrial plants which employed 142,000 workers. The study found that 65 percent of the people were potentially exposed to harmful physical agents, such as severe noise or vibration, or to toxic materials. The Surgeon General further examined controls that were in effect to protect workers from such hazards, and found that only 25 percent of the workers were adequately covered.

Based on the limited data available, the Public Health Service has now concluded that there are 390,000 new occurrences of occupational disease each year. I underscore that this is a conservative estimate that is given by the Public Health Service—390,000 new occurrences of occupational disease each year.

Studies of particular industries provide specific emphasis regarding the magnitude of the problem. For example, despite repeated warnings over the years from other countries that their cotton workers suffered from lung disease, it is only within the past decade that we have recognized byssinosis as a distinct occupational disease among workers in American cotton mills. Recent studies now show that this illness, caused by the dust generated in the processing of cotton, and resulting in continuous shortness of breath, chronic cough, and total disablement, affects substantial percentages of cotton textile workers. In some States, as many as 30 percent of those in the carding or spinning rooms have been affected, and it has been estimated that as many as 100,000 active or retired workers currently suffer from this disease.

Asbestos is another material which continues to destroy the lives of workers. For 40 years, it has been known that exposure to asbestos caused the severe lung scarring called asbestosis. Nevertheless, as an eminent physician and researcher, Dr. Irving J. Selikoff, testified during the Labor subcommittee's hearings

It is depressing to report, in 1970, that the disease that we knew well 40 years ago is still with us just as if nothing was ever known.

It has also since been found that manufacturing and construction workers exposed to asbestos suffer disproportionately from pulmonary cancer and mesothelioma. Because nothing has been done about the hazards of asbestos, even after its association with lung cancer was first reported in 1935, 20,000 of the 50,000 workers who have since entered one asbestos trade alone—insulation work—are likely to die of asbestosis, or cancer. Nor is the potential hazard confined to these workers, since it is estimated that as many as 3.5 million workers are exposed to some extent to asbestos fibers, as are many more in the general population.

Pesticides and fungicides used in the agricultural industry have increasingly become recognized as a particular source of hazard to large numbers of farmers and farmworkers. Many of these poisons have a chemical similarity to commonly used agents of chemical and biological warfare, and exposure has caused fever, nausea, convulsions, long-term psychological effects, and death.

While the full extent of the effect that such chemicals have had upon those working in agriculture is totally unknown, an official of the Department of Health, Education, and Welfare has estimated that 800 persons are killed each year as a result of improper use of such pesticides, and another 80,000 are injured. Despite the unmistakable danger that these substances present, there presently exists no effective controls over their safe use and no effective protections against toxic exposure of farmworkers or others in the rural populace.

I cite these as just a few of the many examples, brought out in our hearings, of the neglect we have so shamefully accorded the health of the worker for so many years.

Although many employers in all industries have demonstrated an exemplary degree of concern for health and safety in the workplace, their efforts are too often undercut by those who are not so concerned. Moreover, the fact is that many employers—particularly smaller ones—simply cannot make the necessary investment in health and safety, and survive competitively, unless all are compelled to do so. The competitive disadvantage of the more conscientious employer is especially evident where there is a long period between exposure to a hazard and manifestation of an illness. In such instances, a particular employer has no economic incentive to invest in current precautions, not even in the reduction of workmen's compensation costs, because he will seldom have to pay for the consequences of his own neglect.

Nor has State regulation proven sufficient to the need. No one has seriously disputed that only a relatively few States have modern laws relating to occupational health and safety and have devoted adequate resources to their administration and enforcement. Moreover, in a State-by-State approach, the efforts of the more vigorous States are inevitably undermined by the shortsightedness of others.

In sum, the chemical and physical hazards which characterize modern industry are not the problem of a single employer, a single industry, nor a single State jurisdiction. The spread of industry and the mobility of the work force combine to make the health and safety of the worker truly a national concern.

In the past, Congress has enacted safety programs for a few of the more hazardous occupations, such as coal mining, metal mining, and longshoring. As a matter of fact, with respect to the area of coal mining, we are just about at the anniversary of the passage of a milestone in legislation dealing with health and safety hazards in a workplace, the coal mines of our land. It was just a year ago that a measure finally was passed in Congress and signed into law. I believe it was on December 31 of 1969.

It has also adopted legislation requiring construction contractors and others performing work for the Government to observe certain safety and health standards. While sorely needed, such legislation has represented a piecemeal approach which provides no protection for the great majority of American workers, and fails to meet many of the basic problems of safety and health which we encounter today in the Nation's workplaces.

In recognition of this fact, both President Johnson and President Nixon have urged enactment of a comprehensive program to meet the total range of occupational safety and health requirements.

As President Nixon said in his September 11 message to the Congress on this legislation:

It does not exaggerate to declare that such a program should have become Federal law three generations ago. This was not done, and three generations of American workers have paid for it.

It is against this background of unmistakable need that the Committee on Labor and Public Welfare reported out S. 2193, providing for just such a comprehensive approach to the problems of health and safety faced by today's worker.

The bill would place in the Secretary of Labor the responsibility for promulgating mandatory safety and health standards, applicable to particular hazards or particular industries. In exercising this responsibility, the Secretary would utilize and build upon the work already done by private industry and Government in the formulation of standards; and opportunity would be given, through advisory committees and hearings, for affected employers and employees to have a voice in the standards-making process. The expertise and research resources of the Department of Health, Education, and Welfare would be applied in the development of the necessary health criteria.

The bill provides for inspections to be made by the Labor Department, with authority to issue citations ordering the abatement of violations and proposing penalties, where appropriate. Employers who wish to contest a citation or proposed penalty would have a right to a full administrative hearing with review by the Secretary, and ultimate appeal to the courts. Employees are also given appeal rights when they believe that an unreasonably long period of time has been allowed for abatement of a violation.

Under this bill, the States will continue to exercise jurisdiction over those activities for which no Federal standard has yet been established. Moreover, in recognition of the fact that many States may wish to administer their own occupational safety programs, even in those areas for which Federal standards are established, the bill provides for the submission of a State plan for the development and enforcement of safety and health standards. Such a plan shall be approved by the

Secretary of Labor if it provides for a program which is at least as effective as the Federal program and meets certain specified criteria. Indeed, every encouragement is given to the States in this regard, for the bill authorizes Federal grants to support the development and administration of such State plans.

A particularly urgent concern repeatedly brought out during our hearings is the frequent exposure of many workers to a great variety of toxic materials or harmful physical agents. They are often unaware of the nature of such exposure or of its extent. In some cases, the consequences of overexposure may be severe and immediate; in other cases, effects may be delayed or latent.

In all of these situations it is important that the worker be adequately protected against excessive exposure to fumes, gases, dust, or other substances determined to be harmful, and equally important that he be aware of any such hazard. Accordingly, our bill provides that standards dealing with toxic materials or harmful physical agents shall make suitable provision for the use of warning labels, the administering of appropriate medical examinations, and monitoring by the employer of the levels of employee exposure. In addition, employees would have access to the records of such monitoring and, whenever the level of exposure exceeded that permitted by the applicable standard, the employer would be required to notify the employees of this fact and of the corrective measures taken.

These particular provisions are among the most significant ones in the pending bill, and are absolutely essential if workers are to be properly protected from the chemical and physical hazards which increasingly grow more complex and more grave.

Accomplishments of the objectives of this legislation will of course require extensive research activities in the field of occupational health and safety, and our bill places this responsibility in the Department of Health, Education, and Welfare. To help insure that such research receives the attention and the status it deserves, we have established within the Department a new Institute, to be known as the National Institute for Occupational Safety and Health, which would be expected to perform, directly or through grants, the great variety of research undertakings contemplated by this bill.

As many are aware, certain features of this legislation have been the source of considerable controversy in public discussion and in committee deliberations. I am happy to say that a number of these issues have been resolved in a manner which seemed acceptable to the viewpoint of all Senators on the committee.

I should like to repeat that: Many of the tough and controversial issues were resolved. Many received a unanimous consensus—a unanimous statement of resolution.

One which I think particularly appropriate to mention, in view of the concern it has occasioned within the business community, is the so-called "general duty" clause contained in section 5 of our bill. Under this clause, employers, in addition to complying with promulgated standards, would be under a general obligation to provide safe and healthful working conditions. This clause, which was strongly recommended by the National Safety Council and is similar to those found in a great many State statutes, was included in the bill to provide a means for requiring correction of hazardous situations which happened not to be covered by a specific standard. However, because

of concern that this provision might impose too vague and sweeping a duty on employers, the Committee bill was clarified so that the duty is limited to maintaining the workplace free from "recognized" hazards. There is no penalty for violation of the clause; it is only if the employer refuses to correct the unsafe condition after it has been called to his attention and an abatement order issued that a penalty may attach. Before that is done, the employer would be entitled to a full administrative hearing, followed by judicial review, if he disagrees that the situation in question is unsafe. With these clarifications, I believe this issue has been resolved in a manner agreeable to all members of our committee, and which I hope will be accepted by this body.

I might point out, too, that in order to make clear that achieving the goals of a safe workplace is not a one-sided matter, we added in committee a provision placing upon employees, as well as employers, the obligation to comply with all applicable requirements under the act.

I should also add, despite some widespread contentions to the contrary, that the committee bill does not contain a so-called strike-with-pay provision. Rather than raising a possibility for endless disputes over whether employees were entitled to walk off the job with full pay, it was decided in committee to enhance the prospects of compliance by the employer through such means as giving the employees the right to request a special Labor Department investigation or inspection.

Another issue which has occasioned considerable controversy is the provision giving the Secretary of Labor authority to require the immediate withdrawal of workers from areas where there is a danger of such imminence that it could cause death or serious harm before it could be abated. The committee adopted a number of amendments to provide every assurance that this authority would not be used arbitrarily or unnecessarily, nor in a manner to cause undue economic loss. Such amendments provide that imminent danger orders may be issued by the Secretary or his representative only if there is not sufficient time to first obtain a court order, and even then may remain in effect for only 72 hours; they also provide that no such order can be issued by an inspector without concurrence of a designated regional official of the Labor Department; and that the Secretary must provide employers with a means to obtain expeditious, informal reconsideration of such orders. In addition, the bill provides that an imminent danger withdrawal order shall allow the continued presence of individuals needed to correct the danger, to enable a continuous process operation to avoid a complete shutdown, and to permit any necessary shutdown to be made in a safe and orderly manner.

These limitations have not satisfied those who believe that imminent danger matters should be left entirely to the courts, and that the Secretary of Labor should have no authority whatever to order the withdrawal of employees from an imminent danger situation. The great majority of our committee strongly believed, however, that some authority should be provided the Secretary to take immediate action in those cases where disaster was the probable alternative. I should add that the laws of many States provide the State labor inspectors with even broader authority with regard to closing down imminent danger hazards, and throughout our entire hearings we heard of no instances where this authority had been abused.

A third issue to be mentioned is the administration's proposal to create a separate board to set standards, and still another commission to hand down enforcement orders, with the Secretary of Labor limited to conducting inspections and issuing citations. I know of no other regulatory program which is administered in such a segmented fashion. I believe that to do so here would result in such diffusion of responsibility and accountability as to seriously undermine the effectiveness of this program. Accordingly, the majority of our committee wisely concluded that the Secretary of Labor ought to be assigned the responsibility for promulgating and enforcing the standards under this act, subject to those provisions of the Administrative Procedure Act which insure that considerations of due process are fully satisfied. This is the manner in which the great majority of other Federal regulatory statutes are presently administered—including other Federal safety statutes—and there is no reason to depart from that approach in this instance.

Mr. President, the legislation now before us comes many years too late. We surely owe it to the millions of working men and women whose health and lives are unnecessarily jeopardized by hazards of the workplace to pass the most effective measure we can devise. Our committee has held extensive hearings on this matter and has given it careful consideration in executive sessions. I earnestly hope the bill we have reported to the Senate, S. 2193, will be acted upon promptly and favorably.

Mr. JAVITS. Mr. President, I am the ranking Republican member of this committee and have given a great deal of time and attention to this critically important bill. So has the Senator from Colorado (Mr. DOMINICK) and others, but I think this has been primarily true of the Senator from Colorado and myself.

This entire bill is so vital and affects so many millions of American workers that, though we are back for the first day, I hope Senators, or at least their staffs, will give some consideration to what is really at stake here.

Personally, I believe that critically important phases of the bill have been somewhat overlooked in view of the labor-management controversy which has developed, which I deprecate and deplore, over the administration of the bill. I do not believe this will make or break the bill, although with all respect to management and labor, they think so. I do not.

The general attitude of labor is to have the Secretary of Labor administer the bill, including the promulgation of standards and the adjudication of complaints of violations.

The position of the administration is that it wants a board to handle the standards and a commission to handle the violations.

I introduced the administration bill in the first instance. I did my best to extract the best out of it. However, I did not consider this particular issue to be the most dominant.

I finally found it necessary to side with what was the working majority on the committee in order to get the bill to the Senate floor because I think the bill is required urgently in the interest of millions of workers.

I have suggested a compromise. I would like to pay tribute here to the Senator from Colorado (Mr. Dominick). If the majority party had been willing to accept my compromise I do not believe we would be in

this struggle right now. My compromise was to have a commission to deal with violations and to leave the establishment of standards to the Secretary. Like all compromises it satisfied neither party—this is, neither management nor labor—but it was an effort to do reasonable justice. Had the compromise been accepted I believe the Senator from Colorado (Mr. Dominick) would have felt we had done all we had reason to believe we could do, although he is not bound in any way. I thoroughly agree with him and he is correct in presenting the whole administration position, which he will do in the proper way.

For myself, at the opportune moment I will offer the compromise if it appears the Senate is in a mood for it.

Laying those two issues aside for a moment, as I explained, what happened here because of this controversy, is a whole network of other issues which to my mind are infinitely more important to the workers and management than the means by which the bill is administered. First, what kind of standards shall be established immediately to get this program off the ground? Shall they be proprietary standards—that is, promulgated by a nationally recognized standards producing organization? Or must they be limited to so-called consensus standards, which is the approach of the administration bill, where it really relates to the traditional practice in the industry?

I think that is critically important with respect to which way we choose to go because those will be the rules of the game to be applied for a long time until under the law there can be a crystallization and promulgation of standards by whatever body is charged with developing them under the bill.

Another thing that is very important is the criteria for standards. The committee bill requires that standards shall be those that most adequately and feasibly assure on the basis of the best available evidence that no employee will suffer impairment of health or functional capacity. I caused the words "and feasibly" to be introduced. I thought it was important that they be inserted and the committee adopted that point of view.

Another critically important matter is the one dealing with imminent danger orders which relate to the power, if there be any, to close up a plant, with the resulting stopping of industrial processes and throwing thousands of people out of employment, on the ground there is an immediate danger and they cannot wait to go into court to deal with it.

Another problem relates to the rights employees have with respect to inspections and what accounting is due employees with respect to the results of those inspections, whether or not there is an order made for corrections which employees may consider essential, and the grounds upon which the Secretary makes his decision.

Then, there is the general duty provision, where the committee bill says there is a general duty to avoid "recognized hazards" whereas the administration substitute provides a general duty to avoid "readily apparent hazards creating a risk of death or serious physical harm."

Mr. President, these are very substantive questions with which the Senate must deal in an alternative way as well as the question of the means of administration.

I rise at this time only to try to introduce a greater degree of interest on the part of Members in the less sensational aspects of the bill which I have discussed because I think there will be plenty of interest

manifested in the more sensational aspects of the bill, to wit, who shall administer it and who shall deal with violations.

I repeat that I offered a compromise in committee. It was a grave mistake not to accept it. If it were accepted I think we would be in an almost agreed upon position today. In the absence thereof the Senate will have to make a choice on the means of promulgating standards and the enforcement.

If the situation indicates that the Senate is in the mood for a compromise I will in the proper way propose it, but I think in all fairness the Senator from Colorado (Mr. Dominick) is entitled to the first opportunity, which he will shortly take, to put forward the administration position.

Mr. DOMINICK. Mr. President, I ask unanimous consent that during the debate and action on the bill the minority staff member, Mr. Wise, may be permitted in the Chamber.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMINICK. Mr. President, I send to the desk an amendment in the nature of a substitute and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment in the nature of a substitute.

Mr. DOMINICK. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment in the nature of a substitute will be printed in the **RECORD**.

The amendment in the nature of a substitute, ordered to be printed in the **RECORD**, is as follows:

(The amendment offered by Senator Dominick, is identical to S. 4404.)

Mr. DOMINICK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS of New Jersey. Mr. President, for the benefit of Senators, it is the intention of the manager of the bill to have the debate on the substitute offered by the Senator from Colorado continue, and I shall be moving to table the substitute some time between 3:30 and 5 o'clock.

Mr. DOMINICK. Mr. President, I want to thank my friend from New Jersey for having made clear his intention on the proposal I have submitted to the Senate. I think the time specified gives us adequate time to explain both the substitute and the areas of difference between us. It is also, if I may say so, in accordance with the discussions the Senator from Ohio, Mr. Saxbe and I had with the majority leader before we recessed in October, at which time we said that after the election we hoped this would become one of the first items of business and that we would agree to a limited time.

For the benefit of my colleagues who may read the **RECORD** or those who are on the floor at the moment, in the event the motion to table carries—and I sincerely hope it will not—we will then be offering amendments separately to the committee bill. I shall also be willing to reach an agreement on a limitation of time on each of

those amendments. Hopefully, we can come to a conclusion on this bill before the week is ended; and, perhaps, within the next few days.

Mr. President, I think it is important in making the record here that we point out that the substitute is not in any way designed to downgrade the need and the desirability of affording health standards and occupational safety standards for the workers of this country. I start out by saying that immediately after the substitute starts, section 2(a) reads:

The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

Subsection (b) reads:

The Congress declares it to be its purpose and policy, through the exercise of its powers, to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.

So it ought to be made crystal clear that we are not trying to do anything to downgrade health standards. We are trying to provide legislation which will, in a more equitable way, permit development of safe and prudent health and safety standards by one body, to have the administration of those standards by another body, and to have the enforcement by a third group, so that we do not have so-called star chamber proceedings, which would be permitted under the bill as it was reported out of committee, and to which we object.

Mr. President, the law which we pass must be workable and effective. This means the bill must establish realistic mechanism which call not only for the development and enforcement of strong standards but will also be fair and accord all parties, including employers subject to regulation.

In my opinion, Mr. President, the committee bill fails to do that. I think it is only fair to ask why. The reason is that it does not balance the need for regulation with the requirements of fairness and due process. The concentration of all authority for the promulgation of standards, the inspection and investigation of complaints, the prosecution of cases, and the adjudication of cases, totally in the hands of the Secretary of Labor is not a balanced approach. It is this structure, this procedural mechanism, which is objectionable to me, and I believe objectionable to many people around the country. It is objectionable because concentration of power gives rise to a great potential for abuse. A single man is easier to harass than an independent board or commission. Political pressure can be concentrated to achieve a particular point of view or course of action. The tradition of this Nation has been to place safeguards on power whenever it is granted. One of the greatest safeguards has been the separation of powers. By separating the legislative, executive, and judicial functions, a balance has been achieved which permits progress without abuse of authority. The separation of power proposed in S. 4404 provides a structure which will achieve the goal of safe and healthful working conditions without raising the spectre of abuse. It is because of this structural deficiency and because the concentration of power does not permit the fullest utilization and coordination of expert opinion that S. 2193 is opposed by the administration, by employers, by State occupational

health and safety agencies, and by various groups which are active in producing standards in the occupational health and safety field.

This is not to say, Mr. President, that the reported bill is totally objectionable. Indeed, many of the provisions of the substitute amendment are the same or similar to those of the reported bill.

I have in my hand a letter, which I think it is only fair to read into the RECORD at this point, from the Department of Labor, signed by the Secretary. It is dated October 12, 1970, and it reads as follows:

DEAR SENATOR DOMINICK: I am writing concerning S. 4404, an Occupational Safety and Health bill which was introduced by you and co-sponsored by Senators Griffin, Saxbe, and Smith.

During his first year in office, President Nixon in a special message to Congress proposed a strong comprehensive occupational safety and health measure. Along with his message, the President transmitted a proposed Occupational Safety and Health draft bill which was introduced as S. 2788. Since the introduction of S. 2788, the President has mentioned in three separate messages to the Congress the importance of enactment of occupational safety and health legislation.

The Secretary goes on to say:

I would like to indicate my support for S. 4404, which incorporates the best features necessary for efficient administration while at the same time incorporating many features which assure fair as well as firm enforcement. A companion bill to S. 4404, H.R. 19200, was introduced by Congressman Steiger and Congressman Sikes in the House of Representatives. I am proud to say that I was personally involved in discussions with Congressmen and representatives of both political parties in helping to develop these compromise bills.

S. 4404 is a strong comprehensive proposal which would assure effective and fair procedures for promulgating occupational safety and health standards, and for enforcing those standards. My efforts in developing this compromise proposal were the result of my strong belief in the need for the enactment of a comprehensive Federal occupational safety and health act in this Congress.

Sincerely,

J. D. HODGSON,
Secretary of Labor.

Mr. President, I think that puts the picture fairly clear, showing the administration's support and showing the balance of powers which the President is supporting and which I am supporting in this substitute.

However, the substitute bill does provide a framework which embodies the necessary structural separation and procedural safeguards to insure strong regulation and due process. A comparison of the two bills demonstrates this.

Under the committee bill, the Secretary of Labor is given authority to promulgate all standards. Under the substitute, all standards would be promulgated by a National Occupational Safety and Health Board, separate and independent of other Federal agencies. The Board would be composed of five members, all qualified by previous training, education, or experience in the field of occupational safety and health; the members would be appointed by, and serve at the pleasure of the President.

Both bills provide for three types of mandatory standards—early, emergency temporary, and permanent.

Early: Under the reported bill the early standards are of three types: First, national consensus standards; second, already existing Federal standards; and third, standards also promulgated prior to the date of enactment of this Act by national organizations but by a non-consensus method. These standards must be issued by the Secretary as soon as practicable within 2 years following the effective date,

unless the Secretary determines that their promulgation will not result in improved safety or health for certain employees. No provision is included with regard to how long these standards stay in effect or how they are superseded. Apparently, they would remain in effect until the Secretary decided to exercise his general authority to promulgate, modify, or revoke any "standard" under the act.

S. 4404, the substitute, also provides for early standards; however, S. 4404 has only 2 types: First, national consensus standards; and second, already existing Federal standards. These standards must be issued by the Board, as soon as practicable within 3 years following the effective date, unless the Board determines that these standards will not assure safer and more healthful working conditions. The substitute specifically provides that the standards remain in effect only until superseded by permanent standards.

These early standards would be promulgated by rule by the Secretary, or by the Board under the substitute. The APA does not apply, except in the case of nonconsensus standards under the committee bill, where informal APA rulemaking procedures do not apply; that is, submission of written views with informal hearings which would be in the Secretary's discretion.

Both bills provide for emergency situations. The provisions are essentially the same except the Board and not the Secretary would promulgate the emergency standards under S. 4404.

The committee bill provides that emergency temporary standards must be promulgated by the Secretary if he determines that they are needed to combat grave danger from toxic or physically harmful substances, or from new hazards. These standards stay in effect until replaced by permanent standards which the Secretary is required to issue within 6 months after emergency temporary standards are issued.

Under S. 4404, the substitute, the standards would be limited to setting an emergency temporary standard where the Board determines that employees are exposed to grave danger from substances determined to be toxic or from new hazards which result from the introduction of new processes.

These emergency temporary standards, under both bills, would become effective immediately on publication in the Federal Register. Under the reported bill, permanent standards would be promulgated by the Secretary under informal rulemaking procedures of the APA; but a hearing is required, if an interested person objects to a proposed standard. The use of advisory committees is authorized, but not mandatory.

The Secretary is required to issue a standard within 60 days after the expiration of the period provided for the submission of views—as required in informal APA rulemaking—or within 60 days after the hearing—required where an objection is made—ends.

Under the substitute, S. 4404, permanent standards are set by the Board, using formal rulemaking procedures of the APA. The use of formal procedures helps assure that all will have an opportunity to be heard and that a standard must be based on substantial evidence on the record. The use of advisory committees, as in the reported bill, is not made mandatory.

Mr. President, I think we ought to remember that we are dealing here with every type of industry that one can think of in this country. When we are talking about commerce between the States or anything

that affects commerce, under the interpretations of the Supreme Court, that would take in everything from a shoeshine shop to an oil refinery, to a restaurant, to a steel plant, to almost any type of industry or employee you can think of. We are dealing with all types of health problems and safety problems. We are dealing with all kinds of differing conditions in the various States; and unless we have an input into an impartial board set up independently from the Labor Department, we are not going to have the necessary circumstances detailed which would allow us to set forth a fair and efficient rulemaking procedure.

I think this Board for the establishment of standards is perhaps one of the key items that we have in the substitute. In fact, I know it is; and unless we do it that way, I am afraid that we are in for a very substantial problem.

The Board is required to promulgate a standard 60 days after the formal hearing ends—if advisory committee is utilized—and 120 days afterwards—if no advisory committee is used. Also, the Secretary of Health, Education, and Welfare or the Secretary of Labor may request the setting or modification of a standard, and the Board must commence standard-setting procedures within 60 days after the request is made.

In setting standards, the committee bill requires the Secretary to set standards which most adequately and feasibly assure that no employees will suffer any impairment of health or functional capacity, or diminished life expectancy even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

There is no such provision in the substitute bill. But I ask, Mr. President, just thinking about that language, let us take a fellow who is a streetcar conductor or a bus conductor at the present time. How in the world, in the process of the pollution we have in the streets or in the process of the automobile accidents that we have all during a working day of any one driving a bus or trolley car, or whatever it may be, can we set standards that will make sure he will not have any risk to his life for the rest of his life? It is totally impossible for this to be put in a bill; and yet it is in the committee bill. Fortunately, we do not have it at this time in the substitute.

The committee-reported bill also provides that standards shall prescribe the use of labels, warnings, employer monitoring or measuring of employee exposure to hazards, plus types and frequency of medical examinations or other tests which shall be made available by the employer or at his cost, to employees exposed to hazards.

The substitute, S. 4404, has provisions authorizing an appropriation or the Secretary's purchase of equipment to measure the exposure of employees to working environments which might cause cumulative or latent ill effects.

This could be in a cement plant, or any type of plant dealing either with fine, sooty particles in the refining process, or which might even result from improper protection from paint sprays or things of that nature. I can think of all kinds of things where this would come into play, and where we would need to have some kind of working equipment to deal with the hazards and try to find out the degree of those hazards. So we authorize appropriations for the purchase for this type of hazard or risk.

The substitute also provides that standards must prescribe the posting of such labels or warnings as are necessary to apprise employees

of the nature and extent of hazards and of suggested methods of avoiding or ameliorating them. The substitute has no express provision requiring medical examinations, but such examinations are obviously contemplated under the bill because an exception is provided for those who object to "medical examination, immunization, or treatment on religious grounds."

Both bills specifically provide for judicial review of standards. Under the committee bill, judicial review of standards is provided in the various U.S. courts of appeals. This right may be exercised up to 60 days after the standard is promulgated. The committee bill specifically provides that the filing for review not act as a stay of the standard, **unless so ordered by the court.**

The substitute bill, S. 4404, has a similar provision, for judicial review of standards, except the U.S. Court of Appeals for the District of Columbia is the only forum. Unlike the reported bill, this judicial review of standards is made an exclusive remedy. The time-period for review is 30 days after publication of the standard. Also, a petition for review would not stay the effect of a standard unless specifically so ordered by the court.

Then we come to enforcement. Mr. President. In general, under the provisions of the committee bill, as I outlined to begin with, the Secretary of Labor would first promulgate the standards; then he has to administer them; then he has to find out whether or not there has been any kind of violation; and then he has to enforce them. So he wears about four hats; and if I ever heard of anything which concentrates power, this one does it.

Under the substitute bill, we do not do that. As I have said, we have a separate independent board for the adoption of standards to start with. Then, when we come down to the enforcement—I will put it this way first. The Secretary of Labor retains the administrative power, and he also retains the inspection and investigation. But after we get to that, we come to the enforcement procedures. And what are we going to do on that?

After the inspection procedure has been determined, and if there is an alleged violation, then, under the substitute bill, we establish an Occupational Safety and Health Appeals Commission composed of three members appointed by the President to serve staggered 6-year terms.

When the Secretary of Labor issues a citation as to an alleged violation, the employer has 15 days to notify the Secretary of his intention to contest the citation. If the employer so contests, the Secretary would notify the Appeals Commission, which would then afford the employer an opportunity for a hearing.

Enforcement of the Commission's orders where necessary, or review of those orders, would be in the U.S. court of appeals. If the citation is not contested within a 15-day period, it is deemed a final order of the Commission.

This is totally different, as I have said, from the procedures authorized in the committee bill as it has been reported to the floor.

I might say here that this is one of the points that the distinguished Senator from New York made in committee and again has made on the floor today—namely, that a separate commission or panel, as he called it, should be set up for the enforcement procedures. That, of course, as I say, is part of the substitute bill.

Our substitute also provides that in the case of a willful or repeated violation of the act's requirements, a possible civil penalty of up to \$10,000 per violation may be imposed. So we have teeth in this substitute.

Some allegations have been made—not by the Senators on the floor, but by other people—that the purpose of this is to try to tone down the penalties or to make sure that the worker is not going to have his fair treatment. Nothing could be further from the truth. What we are trying to do is to set up a balanced bill. If some employer is willfully violating standards which have been set by the board and which have been inspected by the Secretary, and an allegation has been made that they have been violated, there are real teeth in this bill to make sure that the employer has to live up to the standards that have been so set.

Under the substitute, it is mandatory in the case of serious violation that the citation include a proposed civil penalty of up to \$1,000 per violation. In the case of ordinary violations, the Secretary may include in the citation a proposed civil penalty up to the same amount.

Under the substitute, a violation of a final order, or of a citation which has become a final order through failure to appeal, carries a possible civil penalty of up to \$1,000 per violation, and each day a continued violation is a separate offense. So it is a very substantial penalty.

Any willful violation of a specific standard or of other requirements of the act is liable to a fine of up to \$10,000 and up to 6 months in jail, and \$20,000 and up to a year in jail for a second conviction of a willful violation, under the provisions of the committee bill.

As noted above, under the provisions of the substitute, we have a civil not a criminal penalty for a willful or repeated violation. That has been treated with some care. We did it this way because I think most of us know how difficult it is to get an enforceable criminal penalty in these types of cases. Over and over again, the burden of proof under a criminal-type allegation is so strong that you simply cannot get there, so you might as well have a civil penalty instead of the criminal penalty and get the employer by the pocketbook if you cannot get him anywhere else.

Mr. President, the Senator from New York, in the process of making a very brief talk on this bill, pointed out the so-called imminent danger procedure. I must say that the committee dealt with this, in my opinion, so that it toned it down to some degree from the way it was originally presented to us in executive session. Nevertheless, we still have a provision in here whereby an inspector can go into a plant, and if he thinks there is an imminent danger somewhere, all he has to do—one man, as an inspector—is to call the regional office or somebody else in the Labor Department and shut down the whole plant immediately, by an order, without any court findings, without any adjudication, without any due process.

This has created very serious questions in the minds of many employers who have been working hard in the safety field and who feel that this is an arbitrary degree of power, limited as it is; namely, limited by the fact that he has to contact someone and get their OK. They still feel that it is far too strong. Personally, I agree with that. It seems to me that we have gone too far in the committee bill on this so-called imminent danger.

The substitute bill would permit an inspector who finds that he has this to get in touch immediately with anybody he wants to and seek injunctive relief in the U.S. district court. One can get any kind of temporary restraining order within a half hour. This is no problem at all, if the actual danger that is present in the plant is shown. It can be done *ex parte*. It is not necessary to serve notice on anybody. One can go right into a Federal district court, *ex parte*, and get it within a half hour, and then have it come up for hearing on temporary or permanent injunction later.

So I would say that there is no problem in saying that the danger must go to the courts. I have heard many people argue that this is going to be in terms of great delay, that the imminent danger will stay there, that the employees will be subject to hazards to which they should not be subject. The fact is that it simply is not so. It is so with respect to the possibility of delays in courts if something is being tried on the merits and it is going on for a long time. But in terms of *ex parte* injunctive relief, there is no problem in getting it right away.

If this type of injunctive relief is sought under the provisions of the substitute, the inspector must notify both the employee and the employer that he will recommend to the Secretary such relief be sought, and then under the provisions of the substitute if there is an unreasonable failure in the Secretary's judgment to seek relief to abate the danger, employees injured physically or financially can get damages in a court of claims.

The employer is also given the right under the substitute to seek damages in the event of wrongful blame. This would be determined by the district court in an adversary type of proceeding.

These, as I have said, are the major points of difference between the two proposals. There are a number I have skipped over or are terms of technical wording. What we are dealing with as I have said over and over, and again and again, is the question of whether we are going to pass a bill, as it has been proposed by the committee, which will concentrate all the power on all the health and all the safety measures in one department and under the authority of one man. I personally do not think that is correct. I do not think that we should give any one man or any one department—I have said this before and I know that we perhaps have it in some of the independent agencies around here—but I do not think it is right, or that we should give them the power to make the rules, then administer the rules, then inspect to see if the rules are being complied with, and then to file a complaint on violations of the rules or to determine whether it was a reasonable complaint.

If we have it all in one person, how can it be otherwise than an undue concentration of power which can lend itself to all kinds of abuses? Under the substitute bill before us now, what we will be doing is saying that we will have three separate things working. First, an independent board consisting of five members to establish the rules, then the Secretary of Labor will maintain the administrative power over the standards and will also do the inspection and make the allegations of complaint. Those complaints, if challenged, will go before a national commission on enforcement which will again be an independent,

three-member board, which will determine whether the complaint for violation is legitimate. If anyone objects to the panel decision, they can go in and appeal it in the court system.

It is a very much fairer distribution of power, giving both employees and employers a more unprejudiced, bipartisan method of determining what their respective rights may be.

Mr. President, I yield the floor.

Mr. WILLIAMS of New Jersey. Mr. President, the substitute amendment that has been offered by Senator Dominick is an effort to undo all of the discussion and resolution of issues so carefully considered by the committee.

This amendment in various forms was thoroughly discussed by the full committee and there rejected.

There are at least three major provisions which this amendment seeks to change.

Two of the three provisions—a board for setting standards and a commission for enforcement—strike at the core of the mechanism created by the committee bill.

I shall discuss these two areas in some detail, and then I will comment on some of the other provisions in the substitute that constitute complete abandonment of the committee's bipartisan efforts to provide a workable statute.

In arguing that standards-setting and enforcement functions should not be combined in a single agency, opponents of the committee bill seem to assume that we have created some unusual and unfair mechanism for administering this act.

Nothing could be further from the fact, for the truth of the matter is that the provisions we adopted in committee are similar to those which have for many years characterized most Federal regulatory programs.

For example, the Federal Trade Commission, the Securities and Exchange Commission, the Interstate Commerce Commission, and the Federal Power Commission, all combine in a single agency the authority to prescribe substantive rules and to enforce those rules.

Nor has this traditional combination of authority been confined to the multi-member agencies I have mentioned, for a great many regulatory programs are administered by Cabinet officers with responsibility for both rule making and enforcement.

Significantly, a number of these programs are in the safety area. For example, the Longshoremen's and Harbor Workers' Safety Act, as well as the three statutes which impose safety and health obligations on government contractors—the Walsh-Healey Act, the Service Contract Act, and the Construction Safety Act—all give the Secretary of Labor responsibility for issuing standards and for enforcement of those standards.

Similarly, under the Metal and Non-metallic Mine Safety Act and the Coal Mine Health and Safety Act, the Secretary of Interior sets standards and is also charged with enforcement.

I could also refer to the myriad of standards setting and enforcement functions combined within the Department of Transportation under the Federal Railroad Safety Act, the Natural Gas Pipeline Safety Act, the National Traffic and Motor Vehicle Safety Act, the Federal Aviation Act, the Motor Carrier Act, and others.

These statutes all provide the Secretary of Transportation or subordinate administrators, with authority both to promulgate safety standards and to enforce those standards in the fields of air, rail, motor, water, and pipeline transportation.

You will note, Mr. President, that three of the statutes I have mentioned—the Coal Mine Health and Safety Act, the Construction Safety Act, and the Railroad Safety Act—were all passed during this Congress, and we obviously did not believe when those acts were considered, that an unreasonable degree of power or an improper combination of functions was being lodged in one agency.

In fact, when we considered the Coal Mine Safety Act, we specifically rejected, by a 53 to 24 vote, a proposal to establish an independent enforcement board.

I should also point out that the statutes I have mentioned cover some of the most hazardous occupations—longshoring, construction, and mining.

If the combination of standards-setting and enforcement functions is fair for those industries, I see no reason why it is not equally so for others.

Interestingly enough, with respect to the construction industry, Senator Dominick's amendment would continue to assign both standards-setting and certain enforcement responsibilities to the Secretary of Labor, so this combination of functions can not be as objectionable, even in the mind of the author of the substitute, if all functions were combined in this one area that is specified.

Mr. DOMINICK. Mr. President, will the Senator yield at that point?

Mr. WILLIAMS of New Jersey. I yield.

Mr. DOMINICK. Mr. President, I just want to point out that under the substitute bill, the Secretary of Labor is permitted to bring cases alleging violations before a proposed National Commission and not decide it himself.

Mr. WILLIAMS of New Jersey. Mr. President, as I understand it, the Secretary under that act does set standards and has the policing authority.

Mr. DOMINICK. The Senator is correct. But under the substitute bill, the Secretary of Labor alleging a violation could bring it before the new commission created in the substitute bill.

Mr. WILLIAMS of New Jersey. Mr. President, I am correct, though, in the other aspects, both standard setting and enforcement.

Mr. DOMINICK. The Senator is correct. It is already in the law.

Mr. WILLIAMS of New Jersey. Mr. President, there is an even broader inconsistency in the administration's opposition to combining these functions into one agency under this act, for it has recently urged that Congress do exactly that with respect to a number of other programs.

Thus, the President, in Reorganization Plan No. 3, submitted to Congress last July, proposed the creation of a single agency—the Environmental Protection Agency—to be headed by an administrator, to combine existing Federal programs in water quality, air pollution, solid waste management, and other areas of environmental concern. As the President himself described this proposal, which has since been approved by Congress, its purpose was “the pulling together into one agency of a variety of research, monitoring, standard setting and enforcement activities now scattered through several departments and agencies.”

What valid basis can possibly exist for distinguishing the committee's proposal under the present bill?

In sum, the committee bill merely adopts a mechanism of administration which recognizes that the most effective regulation is that which is based upon the experience that comes from enforcement.

It is a mechanism which has long since become a fixture in our regulatory process, and which we have specifically adopted at least three times during this very Congress in this very same field of safety and health.

In all these prior instances, we recognized that due process is protected by the internal separation of function requirements mandated by the Administrative Procedure Act.

These requirements prescribe that those employees of the agency who are engaged in investigation or prosecution shall be separated from those engaged in adjudication. And I see no reason why these requirements will not be as effective in preserving fairness and due process in this act, as they have been in others which we have adopted and which are now in operation.

There are a number of very sound considerations which persuaded our committee to reject the proposal for a separate board to issue standards, and a separate commission to enforce them.

In the first place, the proposal involves the creation of two new, and quite unnecessary, agencies, which inevitably will involve a needless spread of bureaucracy.

To begin with, there would be a total of eight board or commission members, at \$38,000 apiece.

Each of these members will naturally have some staff of his own. All of these people will make very little real contribution to the program, for the real need is going to be for professional and technical personnel at the operating level.

Whereas the Secretary of Labor would be able to get started with the enactment of the bill, the new agencies would have to wait until their members were appointed by the President, confirmed by the Senate, employees were hired, space was found, and all the rest. It presents the classic description of unnecessarily swollen bureaucracy in my opinion.

New agencies would have to compete for personnel with agencies already performing similar functions—and qualified personnel in the field of occupational safety and health are scarce enough as it is, as our committee learned during its hearings on this legislation.

On the other hand, if all functions are performed within the Department of Labor, the best possible use can be made of available personnel, and they can readily be shifted from one type of activity to another, depending on what the priorities of the moment would be.

I think it is a generally sound principle that a new bureaucracy could not be created except for compelling cause—and there is certainly no such compelling cause here.

There certainly is no such compelling cause here. I would suggest that if there were a compelling cause, it would have been made manifest by a description of the procedures under existing law in the programs developed within this Congress that combine the elements under a secretary, as they do under the pending bill. There has been no description here that I have heard of the failure of any of these programs, whether it is construction safety, railway safety, or coal mine safety.

Another basic reason against this substitute is that its board would create an adversary system in the promulgation of standards, with the Department of Labor and Health, Education, and Welfare opposing industry advocates with a probable result of undue confusion and delay, and less effective standards.

By placing the promulgation of standards in the Secretary of Labor, as the committee bill accomplishes, the resulting determination is more likely to be the result of a studied, scientific approach which should characterize rulemaking of this type.

I should also point out that experience has shown that multimember commissions are not given to decisive action, and proposals to abolish the regulatory commissions are now commonplace.

The weakness of the multimember commission is compounded by the mechanism contained in the proposed amendment, for it would break up the program and apportion it among two multimember agencies and the Secretary.

Under such an arrangement, it would be impossible to pinpoint responsibility and we would never be sure just who should be held accountable for shortcomings of the program.

We, of course, can never be absolutely certain that any particular administrative mechanism will be as effective as we all hope, but under the committee bill, we will certainly know whom to call to account if it is not.

Under the amendment now being offered, we would have no way to do so.

Aside from its inadequacies on these two major provisions, the substitute bill is fraught with numerous other deficiencies that would make it a most mediocre offering when compared with the committee bill.

As I stated earlier, the effort to make the reported bill a constructive, workable measure, was a bipartisan effort involving many days of discussion and consideration.

I will discuss just a few of these other provisions that make the committee bill so much of an improvement over the substitute amendment:

First, in the provisions for inspections, the committee bill permits an authorized representative of employees, subject to regulations by the Secretary of Labor, to accompany inspectors in order to aid the inspection, or if there is no authorized representative, the inspector is required to consult with a reasonable number of employees.

This section reflects a fair and practical resolution of the conflicting viewpoint of employers who fear that an unlimited right of employees to accompany inspectors could lead to disruption of production operations and, the viewpoint of employees who urgently believe they need their representatives to participate and assist in the inspection which is so important to their continued protection on their job.

I think this is an important point. Certainly no one knows better than the working man what the conditions are, where the failures are, where the hazards are, and particularly where there are safety hazards. The opportunity to have the working man himself and a representative of other working men accompanying inspectors is manifestly wise and fair, and in arriving at the objectives of this legislation I think it is one of the key provisions of the bill presented to the Senate by the committee.

Second. The committee bill provides that standards shall prescribe the use of labels, warnings, and where appropriate, employer monitoring or measuring of employee exposure to hazards, plus types and frequency of medical examinations or other tests which shall be made available by the employer to employees exposed to hazards.

This provision was incorporated with the knowledge that many occupational diseases develop under conditions of which the employee is unaware, and that employers using potentially hazardous processes should provide the methods by which employee exposure to these hazards can be identified and controlled.

The substitute bill contains no provision whatever with respect to monitoring of hazardous substances by employers, nor does it contain any provision for employees to be informed regarding the level of toxic materials to which they may be exposed.

In my judgment this is one of the most serious shortcomings and failures in the substitute bill.

Third. The committee bill has a very carefully worded requirement in the general duty of employers to furnish employment "which is free from recognized hazards so as to provide safe and healthful working conditions."

Similar general duty requirements appear in numerous State safety laws.

There is no penalty attached for initial violation of this clause, but one is imposed only if there is a failure to correct a violation.

The substitute bill has a much more imprecise general duty requirement.

It is also unjustifiably harsh on the employer because penalties may be imposed for the initial violation of this duty as well as the failure to correct it.

Fourth. The committee bill's provisions for promulgating permanent standards by the Secretary of Labor require the Secretary to utilize the informal rule-making procedures of the Administrative Procedure Act, including a hearing at which all interested parties would be able to present their views.

These provisions which are the same as those contained in almost all other comparable statutes, are fully consistent with administrative process and would enable a speedy promulgation of standards with fair opportunity for those affected to be heard.

The substitute bill would require a much more complicated and time-consuming administrative procedure for setting standards.

It would utilize the full formal adjudicatory procedures of the Administrative Procedure Act.

This procedure would result in interminable delay in the promulgation of health and safety standards because it would require a full trial on each standard rather than the simpler hearing provision of the committee bill.

The difference could mean delay of years instead of months.

Fifth. The bill as reported by the committee provides an opportunity for a person affected by the promulgation of a standard to seek judicial review within 60 days of the promulgation of such standard or the standard may also be challenged during an enforcement proceeding.

This is a very broad-scaled judicial review protection that completely meets any industry concerns regarding the ability to contest the standards in court.

On the other hand, the substitute bill provides for exclusive judicial review within 30 days of the promulgation of a standard, and forecloses any possibility of obtaining judicial review of a standard in an enforcement proceeding.

The practical effect of this exclusive review procedure would be that trade associations and the giant corporations, having an abundance of legal manpower, would monopolize the right of review and thereby deny small employers and companies their day in court.

Sixth. The committee bill permits the Secretary to promulgate proprietary standards, in addition to national consensus standards and already existing Federal standards.

These proprietary standards have been promulgated prior to the date of enactment of the act by national organizations, but by a nonconsensus method.

They represent a great deal of expert research and knowledge in the field of occupational safety and health by private industry.

The fact that they have not been formulated through the consensus method does not make them any less useful in beginning the job of providing adequate protection.

The substitute bill is seriously deficient in failing to make special provision for the use of these available proprietary standards.

Seventh. Under the committee bill, the Secretary is required to set the standard which most adequately and feasibly assures that no employee will suffer any impairment of health or functional capacity, or diminish life expectancy, even if such employee has regular exposure to the hazard for the period of his working life.

The committee bill also requires that the Secretary shall consider, in addition to the attainment of the highest degree of health and safety protection for the employee, the latest available scientific data, the feasibility of the standards and experience gained under this and other health and safety laws.

The substitute bill is completely silent on the matter of providing statutory guidelines for the promulgation of standards—a silence that by itself makes the substitute seriously deficient for the interests of both industry and labor.

The worker is entitled to know that standards in the workplaces are geared to overcoming safety and health hazards that are shortening his life. If he cannot have the assurance that criteria for standards are based on this consideration, he will have a program of no value to him.

Eighth. The committee bill makes allowances in the enforcement section for a reopening of a citation of violation if the employer shows a good faith effort to comply with abatement requirements and that he could not complete abatement because of factors beyond his reasonable control.

The substitute bill again does not provide this highly important and equitable protection for the employer.

Ninth. The committee bill, while guarding against frivolous complaints, permits employees or their representatives to request inspection where they believe that a violation of a safety and health standard exists that threatens physical harm or that an imminent danger exists.

The substitute bill has absolutely no comparable provision for what in so many clearly life and death instances is the minimum assurance to which the employee is entitled.

Tenth. The committee bill provides that in imminent danger situations the Secretary may bring action in the appropriate U.S. district court for a temporary restraining order or an injunction requiring steps to be taken to correct, remove, or avoid the danger, and prohibiting the presence of individuals where the imminent danger exists.

However, the bill authorizes the continued presence of individuals necessary to the correction or removal of the danger or to maintain the capacity of a continuous process operation to restart without a complete cessation of operations, and to permit any necessary shutdown of operations to be accomplished in a safe and orderly manner.

The committee bill also permits the Secretary, if he determines that the danger of death or serious harm is so immediate that action must be taken without awaiting the institution of court proceedings, to order such action to be taken and his order may remain in effect for 72 hours.

This is one of the areas in which there is clearly a distinction between the bill as reported by the committee and the substitute proposed. These are the true emergency situations where time manifestly is of the essence.

The committee bill also provides that the inspector shall obtain concurrence by higher authority for such a withdrawal to be issued; this provision meets the concern expressed by some that a single person should not have the power to determine whether a hazard is so imminent as to warrant interference with a production operation.

This involves the question that an individual should have one in superior authority who can check on his conclusion that there should be a withdrawal of men from the imminent danger situation.

The committee bill also affords further protection to the employer by providing that once an imminent danger order has been issued, the employer, without postponing its mandatory effect, may obtain expeditious informal reconsideration within the Department of Labor, in accordance with procedures to be prescribed by the Secretary.

The substitute's limitation on the Secretary's freedom to act fails to consider that the time consumed in unnecessary legal steps may be the difference between life and death of the worker.

It is obvious that in most cases, employers will recognize the gravity of the danger and will voluntarily close down a machine or a process.

However, in those few cases where the employer refuses, it is imperative that the Secretary retain this important authority.

To repeat, in most cases the employer would or will recognize the gravity of the danger and, we would think, would voluntarily close down; but in those cases where that does not happen, the Secretary, under the committee bill, retains this most important authority.

Furthermore, I believe that objections to authorizing the Secretary of Labor to issue imminent danger orders have been greatly overated in public discussion of this legislation. The safety laws of at least 29 States authorize administrative officials to deal with imminent danger situations.

Such "red tag" or "stop work" provisions typically empower the appropriate State agency to post a notice or issue an order prohibiting the use of machinery; equipment, or work areas found to be dangerous, and in our committee deliberations and hearings we learned of no instance in which such provisions have been invoked unreasonably.

It may also be noted that similar authority is provided in both the Coal Mine Health and Safety Act of 1969 and the recently passed **Railroad Safety Act**.

In my judgment, and the judgment of the committee, the public interest is best served by allowing the immediate remedy of the committee bill for extremely hazardous situations.

Eleventh. The committee bill provides that affected employees who have brought alleged violations to the Secretary's attention may obtain written explanations from the Secretary in cases of failure to **issue a citation after inspection**.

The substitute bill does not make this information available to the employees.

Twelfth. The committee bill provides a criminal penalty in the nature of a misdemeanor for any person who gives advance notice of **an impending inspection**.

The substitute bill, because it does not prohibit advance notice of inspections, seriously compromises the enforcement of this safety and health law.

The requirement to comply with these occupational safety and health standards is not a game to be played only when the official is coming around to inspect.

In this connection, informally it is not in any of the written records on our numerous inspections and field trips of the committee, invariably we were advised by men who worked in the mills, the factories, or the mines, that there had been quite a cleanup operation in preparation for our visit. This is a part of the attitude of "Things are different when it is known that the inspectors are going to be on the scene."

The committee bill makes clear that the Secretary may choose to have announced inspections so that the penalty only applies to those who consciously thwart the enforcement of this legislation.

Thirteenth. The committee bill creates a National Institute for Occupational Health and Safety within HEW that will have the responsibility for conducting research into all phases of occupational safety, including the research, training, and related activities to be performed by the Secretary of Health, Education, and Welfare under other parts of the act.

The Institute was created in order to give the maximum priority and visibility to the all important task of research into these occupational health and safety problems.

The substitute bill does not take account of the urgent need for substantial research and does not make provision for this Institute.

This is one of the most serious shortcomings of the substitute bill, in my judgment. The idea of this focus of research and study into a new National Institute for Occupational Health and Safety will be a pioneering development if it becomes enacted, and one of the major contributions made in our committee work by the Senator from New York (Mr. Javits), the ranking minority member of the committee. I am sure it will come to pass, and it will be another great landmark of hope in health and safety out at the National Institutes of Health.

Mr. President, these are only a few of the numerous agreed-upon improvements that are in the reported bill.

They are not just so-called technical improvements. These provisions are designed to provide the Secretary of Labor with a workable program of occupational health and safety.

Finally, I am also constrained to comment on some of the more obvious comparisons being expressed about this bill.

For example, one statement says:

The Committee bill's regulatory procedures have been compared to having the Chief of Police, in addition to his regular duties of conducting inspections, also enforce the criminal laws and then act as judge and jury.

It seems to me that such inflated rhetoric is completely uncalled for. However, I believe the document containing that rhetoric was circulated to all Members of the Senate.

I come back to what was stated earlier: This procedure in the committee bill is the time-honored and continually applied procedure of all of the legislation in this field of occupational safety and occupational health, and is certainly the same procedure that is used in many other areas of administrative law. I do not know of any area where the procedures of the substitute apply, where we have a secretary with certain functions, where we have a board with other functions, and where we have a commission with a third set of functions. This is an administrative picture that cannot be fully understood, because it has never happened in any other area that I know of. Where the substitute would take us—with duties to the secretary, duties to a new board, duties to a new commission, bureaucracy rampant, duties poorly defined—in terms of administrative management of a program that is long overdue, we cannot hazard a guess.

For President, we are not, except in the case of willful disobedience, enforcing the act, dealing with criminals and criminal laws.

This is a statute designed to preserve the lives and well-being of a million workers who are now faced with industrial hazards that require regulations for the benefit of all concerned.

It will be Congress that has passed this law.

What the Secretary of Labor will carry out the overall scheme, it is the same kind of mechanism that Congress has enacted for over 35 years.

And, as the Congress will enact, and the Secretary enforce, so are the courts the ultimate review of all actions taken under the committee

Therefore, while we may all differ as to the right approach to our workers' safety and health problems, the committee bill draws on the lessons that similar statutes have to offer.

Our bill is fair and reasonable.

It is a good-faith effort to balance the need of workers to have a safe and healthy work environment against the requirement of industry to function without undue interference.

I judge it to be a good bill. It should have a chance to work.

It is a bill that, if enacted, will meet the test of time.

It is the balanced view of a bipartisan Labor and Public Welfare Committee, and should be supported by the Senate.

I and those who agree that it should be supported, at the proper time, in the motion is made to table the substitute that has been offered, respectfully suggest that the proper vote would be to lay the substitute proposal on the table.

Mr. President, I yield the floor.

MR. DOMINICK. Mr. President, I have enjoyed listening to the statement of my distinguished friend from New Jersey, as I always enjoy listening to him.

I know the Senator has put a lot of work into this matter. However I am somewhat confounded by his analysis of the fact that we have got to say with the tried and true, that we cannot start anything new, that we must go on with agencies that have already been in existence for years—the ICC since 1928; all kinds of agencies, even one of which has long been under attack by every commission that has investigated them because of the concentration of powers within them.

Congress has not yet given enough attention to any of these problems, or shown the ability to reorganize any of the agencies to get at the root problem, which is the same old problem proposed in this bill, with all the things put together within one body.

I was really interested in listening to the Senator from New Jersey talk about the Coal Mine Safety Act and then talk about the Metal and Nonmetallic Mine Safety Act. I was involved in those fights too, as was the Senator from New Jersey.

I remember well, before committee and on the floor of the Senate pointing out that our State had the best metal and nonmetallic mine safety program in the country, which was being wiped out by the federal system, because the Bureau of Mines had only approximately 80 inspectors who would have taken about 3 years to do the job which our own people already were doing. Four years after the passage of that bill, just last month, the State of Colorado finally got permission to start readministering its own program under the Federal act—finally, after 4 years. In the meanwhile, of course, many of our inspection force have been lost. We have had to recruit new people, as everyone else has had to do, and we found ourselves in the usual position of the Federal Government taking on a massive job which it was ill-equipped and ill-manned to be able to put into effect.

I recall the Coal Mine Safety Act. I recall the Senator from Kentucky (Mr. Cooper) getting up over and over again and saying—

You ought to make a distinction between the gassy big mines and the non-gassy small mines.

He tried and tried to point out that the problems that were being talked about in the gassy big mines are not present in the small mines, and we could not get anywhere because of the makeup of the Senate, which said it is going to put everything in one package, wrap it in pink paper and put a blue ribbon on it, and say it is safety, instead of determining whether or not it is fair to everybody—the employees and the employers.

We have the same problem in this bill. One of the things I am trying to avoid is to try to put everything in one heap and say that because it is in our heap, it is obviously going to be a nice one, filled with sweet perfume, which will do great things for the rest of the country. We can do it far better in setting up an independent board.

Since the distinguished Senator from New Jersey has quoted the Reorganization Act on environmental health, pointed up by President Nixon, I am happy to quote a Presidential commission established by his President, President Johnson, on product safety—the very same

ing that many people have been talking about in the consumer field which we have in the working field. The National Commission on Product Safety was appointed by President Johnson, March 27, 1968, to recommend programs to protect consumers from product hazards. This Commission has now strongly recommended that Federal product safety standards be established by an independent Federal authority. The arguments advanced by the Commission for this recommendation are similarly applicable in the field we have before us today. This is what President Johnson's Commission on Product Safety had to say about the need for an independent board:

Statutory Regulatory Programs buried in agencies with broad and diverse missions have, with few exceptions, rarely fulfilled their mission.

The reasons for their weaknesses include lack of adequate funding and staffing; cause of competition with other deserving programs within any agency; lack of authority in enforcing the law caused by an absence of authority and independence in the Federal Administrators; and a low priority assigned to programs of low visibility.

When a Federal agency must take up substantial and controversial issues of consumer safety and economics, we believe it needs independent status.

Independence can be furthered by appointment of Commissioners on a non-partisan basis, for staggered fixed terms subject to removal for cause, and by designation of a permanent chairman to serve an entire term in that capacity.

It seems to me that this is exactly what we are talking about in this bill. We are talking about an independent board, consisting of five members, to establish safety and health standards in practically every form of business one can think of. We are not just putting this responsibility in the Labor Department, which is filled with a whole group of diverse problems, not putting it in one department which is already established, and which means a buildup of an enormous staff within that area, but setting up a separate board which will have the benefit of all the agencies—HEW, the National Institutes of Health—any way that you want to think of—to have them involved in trying to determine what are reasonable and prudent standards for the working people of this country. The substitute would do exactly that.

I am going to answer some of the comments that have been made by the Senator from New Jersey as best I can. He commented on the Construction Safety Act, which has been passed in the 91st Congress. It is an interesting thing, which he has not brought up, that the committee bill provides that the standards under the pending bill will supersede the provisions of the Walsh-Healey Act, the Service Contract Act, the Maritime Safety Act, and the Construction Safety Act. So all the work we have done in all these fields up to date would immediately be taken over by this bill, and no one would have a separate act at these particular requirements set up in their own legislation. Under the bill as the proposed substitute has it, while we would be doing the same thing, I may say, in the Walsh-Healey Act and the Service Contract Act, we would not be doing it in either the Maritime Safety Act or the Construction Safety Act. Those provisions remain in effect. The Maritime Safety Act would continue under its own administration, as it now is, but in the Construction Safety Act, the Secretary of Labor, under the substitute bill, would be entitled to go out and inspect and determine whether there have been any violations of the standards established in that act. If they found any, they would then make these allegations and bring them before the three-member commission on enforcement, to determine what can be done, to

make sure that the health and safety standards as established in the Construction Safety Act are lived up to.

It seems to me perfectly evident that this is a fair way of treating it. We already have a law on the books, and instead of superseding that law, what we are saying is that we will retain the law or retain the standards that have been set up for the construction industry and we will provide inspection and determine whether they are being lived up to, by the Secretary of Labor, and he then will bring it before the national commission, as established under this act, to determine whether or not there has been a violation.

This seems to me to be eminently more prudent than to pass a law in the 91st Congress and then all of a sudden say:

Whoops, I'm sorry about that. We're going to do this all over again, and we're going to have new standards which are going to be applicable to the Construction Act, and you won't know what they are until we get through with them about two years from now.

This will be the effect if we pass the bill reported by the committee.

Reference has been made to the question of medical examinations, of monitoring of safety hazards, and things of this kind. I think it is only fair to point out that under the substitute bill, we require that warnings and labels necessary to tell the employees of the nature and extent of the hazards must be posted and that the substitute bill also provides for medical examination and the monitoring or measuring of employees' exposure to hazards. This is so because we have provisions in there which provide for appropriations for such equipment for the Secretary. Consequently, that equipment obviously is going to be put to use not only in determining whether or not there have been violations but also in determining what the degree of compliance may have with the standards as established by the board.

I do not want to be an alarmist on this imminent danger situation, but it is only fair to say that we discussed this in the executive session of the committee at some length and changes were made as the bill was originally presented to the committee. We discussed the fact that one man could go in and shut down a plant on his own finding of imminent danger without consulting with anyone or posting any warning or determining what effect it would have, and which could be disastrous both to employees and employer. We did change that in the committee bill to a degree that he must contact someone in the Labor Department or the regional office, and tell them that they had found an imminent danger and that is what he wanted to do about it, and if they agreed, then he could close down the plant without going to court, or anything.

The order for the closing down of a plant can last for only 72 hours, but let us take a specific case and think about it for a moment. Let us suppose we have an inspector who is working in an oil refinery and he determines that, for some reason, there is a health question. It makes no difference whether there actually is a hazard, because if he thinks he sees one, or he is just mad at someone, he can decide that he should take action in a volatile atmosphere—and I am talking about volatile in terms of literally and figuratively being explosive—and he goes ahead and calls up and he says, "Gee, I have a real bad hazard over here. I think we should close it down." And the inspector says, "I have inspected it and it does not look good to me." So, all of a sudden, that refinery is closed down for 72 hours minimum.

Now the effect of that is not to close it down for just 72 hours because we know the windup time to get it started again, and the people back to work, even if it is only a small corporation—maybe there was a violation and maybe there was no violation—but the time to get started up, and everything else started up again, is enormous.

That would be true if it were a steel plant. If they had to close down a steel plant, what would we do about the furnaces, once they were turned off?

What about automobile production? Suppose it were General Motors, to take an example. We have already been told how long it would take to get back into production in a General Motors plant. They are not nearly so complex in terms of actual techniques as a refinery process is, that one would find in an oil refinery or other similar installations.

It seems to me that this type of action is going beyond the pale. We have human frailties in all walks of life. We have them in government as well as in business. We have them with employees as well as with employers. The one fair process we have developed in this country as a whole is the separation of powers, so that we will have separate bodies of people trying to determine whether one is right or wrong in any kind of alleged violation. That is what the substitute bill would provide. It would provide that whenever we have a situation where an inspector thinks he has an imminent danger, he can then go to court, after giving notice to the employer and the employees, and get an immediate ex parte order, or injunctive relief, if the evidence warrants finding of a violation and that an order should be issued.

This is a far better way of going through our procedure with the separation of powers than giving any administration agency the power of life and death to the degree that the committee bill does, even as amended within the executive committee.

There was comment made on the question of whether we will do research. There is a comparative analysis in the office of every Senator between the substitute bill and the committee bill. I call page 12 to the attention of the Senate, as to what it says under the substitute bill—

The substitute bill does not have any express provisions under which an employer could be required to measure exposure to toxic substances. Instead the substitute bill has a provision (sec. 9(h)) authorizing funds to enable the Secretary of Labor to purchase equipment which he deems necessary to measure exposure of employees to working conditions involving ill effects from exposure to toxic substances. Also, the substitute bill does not expressly provide for medical examinations but these could be provided for in standards issued by the Labor Secretary in consultation with the HEW Secretary. In short, the major difference between the research provisions in the reported bill and those in the substitute bill is that the reported bill spells out in detail what could be included in the standards administratively developed by the Board.

I might also point out that there is no question that HEW was going to do this—which is, again, an interagency cooperation problem—which I think at the present time can be done in a far better way with HEW giving its viewpoint to an independent board establishing the standards, rather than having HEW come to the Labor Department and saying: "Hey, you are doing it all wrong, fellows. We think you can do it this way far better by putting it into a board and by getting the agreement of people around the country who get the input of information and knowledge from all kinds of industries and groups."

Mr. President, I do not believe I am going too far afield here when I say that I think Congress has an opportunity to try to develop a new system to overcome some of the basic defects we have had in our agencies in the past. This has been cited over and over again, on the problems we have with the Federal Trade Commission, which was one of those mentioned by the Senator from New Jersey (Mr. Williams). I do not know how many people have called me to say, "How in the world did Congress ever set up an organization which establishes rules, inspects those rules, determines whether they are being followed, and then comes along and says 'We will have a judicial determination to see whether our rulemaking was right or our inspection was right, or the people who are protesting are right'" — all all within the same department.

We had an example brought out in the hearings. I take that back for I am not sure it was in the hearings but it was told to me, I believe, within the Labor Department itself, where some of the officers of the Labor Department did not realize they should not be talking to the chief of staff on adjudication because he was wearing a separate hat at that time. Each of them had to determine whether he was at any given time filling the role of judge, prosecutor, or inspector. Each of them meets the other every day in the corridor, or sees each other in the halls and we are bound to get inputs from these respective roles on their respective positions, all within one department. This can have no other effect other than to prejudice completely the whole case, or getting any fairness in the adjudication of a program of this scope.

I want to repeat once again, although I know there are few listening to me now — but it is important to keep it in mind, that we are dealing in this bill, even under the substitute, with practically every industry we can think of in the country. I shall not use the term "industry," I will say business—those businesses which affect interstate commerce.

What are they? They are boarding houses. They are restaurants. They are bus lines. They are furniture stores. They are grocery stores. They are paint shops. They are automobile repair shops. They are oil refineries. They are automobile manufacturers. They are oil plants. It would cover the shoe stores. We can walk down the main street of any town we want to think of in the United States and we cannot find a single business in any town that does not have some portion of either its equipment or its supplies, which are not involved in interstate commerce. Every one of these places is going to be affected by the bill. It is an enormous job that we are asking any agency to do. And to pile on one Department, the Labor Department, the responsibility for taking care of all aspects of a job of this nature seems to me to be beyond the pale.

How in the world are they going to find time within the required 2 years to be able to set forth reasonable standards for health and safety for people working in Alaska and Mississippi, in Florida and the State of Washington, in Maine and Texas, in every one of these business, and then be able to say, "not only have we established standards, but we have also developed the administrative procedures within the department and the number of inspectors we need to go in and find out whether the rules are being taken care of in every single little business in this country."

Not only are they asked to have that done, but they are asked to say, "These inspectors are coming back with alleged violations and we have to review those within the same department. We will then set up hearing examiners to determine whether there have been violations."

So the whole procedure of the Department of Labor is going to be multiplied by geometric progression.

It does not seem accurate or even reasonably fair to establish such a burden on the Department and to establish such a burden on the employees and employers of this country.

If we are going to approach this in a proper and innovative way and abolish some of the criticisms that have occurred over the years concerning the agencies, we should adopt the substitute bill under which we have three separate groups performing the separate functions of the establishment of rules, the administration and the enforcement. We would have the Commission for the establishment of rules. The administration would be in the Department of Labor, and we would have the separate board or panel, as the Senator from New York prefers to call it, to determine whether its rules have been violated. That is the enforcement procedure. That is the only proper and fair way to proceed with this bill which is of enormous scope and importance to everyone in the country.

Mr. JAVITS. Mr. President, I have joined in fashioning the pending bill. We are about to be presented with quite a dilemma in respect of it. That dilemma is unnecessary, but it will nonetheless be real. The dilemma is going to be on the motion to table the Dominick substitute, which I believe will probably be made.

An issue, which is not really an issue, will be posed to the Senate. If the tabling motion prevails, any Senator, including the Senator from Colorado, can amend the bill. I am sure that the Senator from Colorado will have a considerable number of amendments as he is a man who follows through and we honor him for that.

If the tabling motion should succeed, as I see it, the bill will be amended. If the tabling motion fails, the Dominick substitute will be amended, because even if it should later fail, Senators will not wish to be caught short on the fact that their ideas have failed of incorporation in the bill.

I assume that if the Senator from Colorado were to have nine amendments to the committee bill, the Senator from New Jersey might have 5 or 20 to the administration substitute.

That will get us to exactly the same place. It only illustrates the tragedy which will be involved because, unhappily for all of us, this will be construed as a vote for or against management or labor, as the case may be.

I think it is very unfair and simply distorts the legislative process. But there it is, and we have to take account of it. There is nothing much we can do about it. I am enough of a lawyer to know that it is not what the facts are, but it is what the judge thinks they are that counts.

Analyzing the situation from that point of view, I wish to make it clear that this vote, if it comes—and I believe it will—is not going to be determinative of the controversy, because either way the Senate will have to face up to the issue. This is simply a climatic test vote on the situation.

It is a fact that there will be more amendments to the substitute to conform it to the committee bill than vice versa.

The administration really objects to five things in the committee bill, and they can, of course, be tested fairly promptly.

Those five things are the question of promulgating standards, adjudicating enforcement cases, the imminent danger orders, the requests for inspection, the penalty for the unauthorized notice of inspection, and the general duty. Those are the fundamental problems which will be faced.

My inclination at this time is to endeavor to perfect the committee bill. I believe that the majority here and in the other body are very much likely to push for occupational health and safety in this session of Congress. I believe we should work on the committee bill. The committee bill was subject to all the negotiation and compromise and the input of the minority, in which the Senator from Colorado had such a very honored part, and to revise it and to discard all that work, it seems to me, would be rather unfortunate.

The situation we face shows the real lack of critical importance of the issue upon which that motion will turn, because if the Secretary of Labor promulgates standards, he is subject to the Administrative Procedure Act. He can create a board, if he wishes to, to deal with the **promulgation of standards**.

If a separate board is established under the substitute bill, that board will be subject to the Administrative Procedure Act, just as the Secretary would be in exercising the same functions.

Similarly, in enforcement, there is court review. The Secretary of Labor can cause enforcement and there will be court review.

Other Secretaries faced with similar enforcement responsibilities have appointed—and I think very properly—panels or commissions of their own to handle enforcement procedures.

I regret to state that whether we like it or not, it is an issue which I think will be pictured as the most important issue in this legislation, the motion to table the Dominick substitute.

I regret it. I deplore it. Nonetheless, there we are. I hope very much that, having swallowed that dose, whatever it may be, whether the Dominick substitute is successful or fails, we will go on and perfect a bill and that there will be no hard feelings, whichever way it goes, but that we will have a preservation of rights for those who feel strongly for the administration and for those on the other side to amend the bill **as they choose and get a bill**.

The purpose of my speaking now is that very point. I hope very much that there will not be such a concentration of attention on the issue of where this bill comes from, whether from the Republican administration or the Democratic majority in the Senate, on the first day we are back so that a signal will not go out to the country that action on this bill is an indication of the way legislation will go.

I hope that whichever side wins or loses will take it in stride and that we can then perfect the measure, the substitute or the committee bill, so that we may arrive at whatever legislation the Senate in its judgment determines to be appropriate.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. JAVRA. I yield.

Mr. DOMINICK. Mr. President, I thought the Senator made a couple of very interesting points. In the substitute bill, for example, we do not have any provisions similar to sections 19 and 23 of the committee reported bill, which are the Javits amendments—the National Institute for Safety and Health and the National Commission on State Compensation Laws.

It would be my guess that if the motion to table is defeated, which I hope it will be, there would be little or no problem in having those provisions offered by the Senator from New York (Mr. Javits), agreed to as part of the substitute bill. I understand that is what the Senator was talking about.

Mr. JAVITS. That is correct.

Mr. DOMINICK. I think this would not be any kind of really tough issue. The really tough issue, and I think the Senator will agree, is whether or not we are going to have a separate body for setting up standards and a separate commission for enforcement in connection with violations.

Mr. JAVITS. I do not want to compromise the Senator's case in any way. I have too much affection for him and respect for the strong fight he has put up for the administration position. But if the Senator feels free to say so, would not the Senator agree with me that the substantive rights of neither side will be compromised by this vote; it is really a climactic situation. The Senator could move to amend the committee bill, and the committee people and I could move to amend the substitute. In either way the Senate will work its will.

Mr. DOMINICK. Procedurally I would say the Senator is correct, but from the point of view of which bill we will have before us and which provisions we will have to amend, I think it is an important vote.

Mr. JAVITS. I thank the Senator.

Mr. YARBOROUGH. Mr. President, the bill was aptly described a moment ago by the distinguished Senator from Colorado as the committee bill. Any bill from the committee we call the committee bill. But this is really a committee bill because it has many provisions from both sides. The distinguished Senator from New York offered some of the most viable provisions in the bill. If you will look at the text of S. 2193, Mr. President, this will be apparent. I have the honor of being one of the six original sponsors and authors of the bill. The distinguished chairman of the Subcommittee on Labor, the Senator from New Jersey (Mr. Williams), is the principal author. Our bill ran over 29 pages. From the first two-thirds of page 30 through page 92 the committee bill is 62 pages long, vis-a-vis the original bill of 29¹/₃ pages.

The committee worked on this matter. There were many changes and differences in the original bill. There are included ideas from both sides. It is bipartisan, as shown by the final vote, which was 14 to 2.

With all of that work which has been done in the subcommittee and in the full committee, it would be tragic if some new bill were substituted on the floor of the Senate. This bill has been worked on for months. As I said, the Senator from New York (Mr. Javits) has many of his provisions included in the bill. I think that when we consider the months of work on this bill in the subcommittee and in the full committee, it would be tragic if some new bill were substituted now.

I had the privilege of being the chairman and preserving all this work by Senators from both parties. So much good work has gone into this bill and it should not be shunted aside by a new bill. This bill has been due for years. Back in the 90th Congress, when I had the privilege to be the chairman of this committee, we had extensive hearings but we were never able to get it this far along the way. We come here now with 2 more years of work on the bill.

This is legislation that has been needed in this country for many years. We have no national comprehensive occupational health and safety bill. If a man in a manufacturing plant in one State were to put into effect safety measures to protect his workers and across the State line that practice was not followed, theoretically there would be a cheaper operational base.

This bill would give everyone the same treatment and the same breaks. We had extensive hearings on this matter. Among other things, the heaviest losses are in construction work. There is one code in the District of Columbia, another in Arlington, Va., another in Alexandria, Va., and another in Maryland. There are four different codes in this area. In some States each city has its own safety bill and safety code.

As a result, each year over 7 million of the working force of 80 million are injured, 2.2 million are disabled temporarily or permanently, and 14,500 are killed. This is an intolerable situation for our economy and our industry. We need a Federal statute, not to try to federalize things, but to equalize the cost in one industry vis a vis another. We know the costs would be put into consumer goods but that is the price we should pay for the 80 million workers in America.

It would be most unfortunate now to substitute on the floor of the Senate a new bill, when so much constructive work has already gone into this bill by so many Senators. I hope the Senate will retain the committee bill as reported.

I understand the Senator from Colorado has individual separate amendments he will offer if the substitute, the new bill, fails. I think the substitute, the new bill, should fail so we can continue with the bill that has been worked on for so many months, and which has been worked on by so many staff members as well as so many Members of the Senate. It would be wholly impossible to take a bill with this much constructive work and cast it aside on the floor for something new.

The committee bill was not reported hastily or rapidly. Long hearings were held in the subcommittee. There was long and careful consideration in the subcommittee. I wish to compliment the distinguished Senator from New Jersey (Mr. Williams) for his fine chairmanship of the Subcommittee on Labor in bringing the bill forward as he did. It was changed considerably in the full committee, and now he is handling the bill on the floor of the Senate.

This is a good measure which is badly needed and it is a measure which is long overdue. I hope we will stay with the committee bill that has been worked out with a bipartisan effort.

I yield the floor.

Mr. WILLIAMS of New Jersey. Mr. President, I appreciate the statement of the majority of the Committee on Labor and Public Welfare, the Senator from Texas (Mr. Yarborough). His cooperation has been complete. Finally we were able to bring the bill to the floor of the Senate. There is so much that has been added by so many members of

the committee to the bill that is before us. Conspicuous, of course, is the work of the Senator from New York (Mr. Javits).

It would be the course of wisdom, indeed, to table the substitute and if there are other amendments they can be offered to the committee bill.

In reply to the Senator from Colorado, I wish to say that under the committee bill the Secretary of Labor, given the authority to promulgate standards, could immediately issue standards in the areas. He could draw from proprietary standards, consensus standards, and standards that apply in other places, but in the broad approach we would go through a long, time-consuming process of appointments, confirmations, staffing, and the entire delaying business, in an area where the President said we are already three generations late in applying Federal standards for safety and health.

Mr. HARRIS. Mr. President, will the Senator yield?

Mr. WILLIAMS of New Jersey. I yield.

Mr. HARRIS. Mr. President, I think this is an extremely important bill. We are all well aware of the needless deaths and injuries which occur in this country, and the resultant human anguish involved.

The bill would authorize the Secretary of Labor to assure safe and healthful working conditions for working men and women. Under provisions of the bill, work hazards will be attacked on three fronts, that is, through improved regulations, research, and education.

Testimony presented before the Senate Labor Subcommittee is compelling and clearly substantiates the need for new comprehensive Federal legislation which would apply to all industries. For example, much of the existing legislation in this area is not uniform in its application or enforcement. Several of the Federal laws apply specifically to the maritime industry and coal mining. Other laws are limited in application to work involving certain kinds of Government contracts.

Today, there are approximately 86 million persons in the American work force. It is both appalling and tragic that as many as 14,500 persons are killed annually as a result of industrial accidents. More than 2 million individuals are disabled on the job each year which result in the loss of 250 million more days of work.

The economic impact of these deaths and disabilities is the loss of \$1.5 billion in wages, and 8 billion dollars from our gross national product. Within the Federal civil service fatal injuries to employees increased from 172 in the year 1964 to 316 in 1968. The direct cost of these injuries was \$39 million and \$58 million respectively. These figures represent the direct cost payment made by the Bureau of Employees' compensation and value of leave of injured employees during disability.

The situation is equally appalling in the area of occupational health. However, the lack of information and adequate records makes it difficult to ascertain the true impact occupational health has on the work force. We do know that many of the technological advances made by this country have produced a number of new health hazards to industrial workers. Discoveries such as lasers, ultrasonic energy, pesticides, and others serve as threats to the health of American workers. Recent scientific experiments have shown causal relationships between occupational exposure and certain chronic diseases such as cancer, allergies,

respiratory ailments, and heart disease. The U.S. Surgeon General in 1966 visited 1,700 industrial plants employing over 142,000 workers in six metropolitan areas. The study revealed that as many as 65 percent of these persons were exposed to harmful physical effects such as severe noise and toxic materials.

A problem which further substantiates the need for the pending bill is the fact that workmen's compensation benefits do not appear to have kept pace with increasing wage levels and the rising cost of living. As a result the benefits usually replace only a small fraction of the income of workers with disabilities. For example, in the State of Oklahoma, the ratio of maximum temporary total disability benefits for a worker, his wife, and two dependent children to average weekly wage was 71.2 percent in 1949, but dropped substantially to 40.8 percent in 1970. This works an untold number of hardships on working people in Oklahoma. In order to find solutions for problems of this sort, a 15 member National Commission on State Workmen's Compensation Laws would be established under section 23 of the bill. The purpose of the Commission would be to study and evaluate State laws to determine if they provide an adequate, prompt, and equitable system of compensation for disabled workers.

Industrial health and safety problems are, indeed, complex and change, perhaps, as fast as industry itself. Accordingly, S. 2123 would simply establish a legal structure which would empower the Secretary of Labor to issue detailed safety and health standards with the force and effect of law. There are no do's and do not's provided. It further establishes the legal procedures for investigating cases of alleged violations of the standards, for conducting hearings, and for imposing sanctions when violations occur. The administration and its supporters argue that this is unwise. They suggest instead two separate Presidentially appointed bodies—one which would issue occupational health and safety standards, and the other to conduct hearings on alleged violations and issue corrective orders.

I believe this approach to be unacceptable because it would result in unnecessary foot-dragging, evasion, and indecision.

Furthermore, for those who oppose the measure in its present form, I would like to state that during this session of Congress, we passed two important bills which are now Federal laws, and which provided cabinet level administrators with the responsibilities and powers to develop and enforce standards. These bills were the Federal Coal Mine Safety Act and the Construction Workers' Safety Act.

It is important to note that section 6(d) of the bill provides that any employer affected by a particular standard may apply to the Secretary for variance provided that he: First, notify his employees so that they are afforded the opportunity to participate in hearings and second, submit evidence for the record, which shows that the company will otherwise provide safe and healthful employment conditions.

Under provisions of S. 2123 representatives of both the employer and employee are permitted to accompany the Government's safety inspector during the inspection tour. This approach would help to assure both groups of the equitable manner in which the inspection is conducted.

Finally, Mr. President, let me say that occupational health and safety is a matter of great importance to a very significant number of

working Americans. The bill before us is one which is clearly designed for the promulgation and enforcement of standards which to the limit of the law will assure their health and safety. In my opinion, the key to effective administration of such standards rests with a publicly viable individual who is likely to be sensitive and responsive to health and safety needs in our industries. S. 2193 would do this by providing protection to both the employer and employees alike. I, therefore, urge its passage by the Senate.

Mr. WILLIAMS of New Jersey. I thank the Senator from Oklahoma.

My final point is that, in connection with imminent danger, under the committee bill, the continuous process operations will not be shut down. Even when there is a court order, continuous operations can go on. There will be no complete shutdown.

There are other problems in the substitute in the imminent danger area, but the fairest way is with the provisions of the committee bill, and it certainly does not provide for a total shutdown. Continuous operations can be continued. Even in an area where the work stops, there is no cooling off of all the fires of operation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, if I may have the attention of the Senate, a number of Senators have asked me whether or not I intend to offer the amendment to provide for an enforcement panel.

My answer to that is that I do. I stated when I made my speech on the bill that I would consider whether it would fit in, and whether it was timely. My answer now is that, consistent with what I expect will be my vote on this motion to table, I consider it my duty to offer that amendment and to fight for it. I think it is the only way, and I hope very much that the Senate may see it that way also.

Mr. DOMINICK. Mr. President, I am delighted to hear what the Senator has said, but I might say that if we adopt the substitute proposal, or fail to lay it on the table, there is already a panel for enforcement provided in the substitute bill, which would make the Senator's amendment unnecessary.

I gather that the Senator from New Jersey is about to make a motion to table, and I presume that at that point we will get the yeas and nays.

Mr. WILLIAMS of New Jersey. Mr. President, I move to lay on the table the amendment in the nature of a substitute offered by the Senator from Colorado.

Mr. JAVITS. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. TOWER. Mr. President, I believe the Senate would be acting in a most positive fashion if it voted down S. 2193 and passed the Dominick substitute S. 4404.

As noted in the committee report on the Occupational Health and Safety Act of 1970, the major differences in these two bills do not relate to purpose or intent of the legislation, but rather to the structure of regulation by the Federal Government. We all agree that improved safety procedures are needed to combat the ever-increasing number of occupational accidents.

However, in my opinion the Senate Labor and Public Welfare Committee has reported out a bill with a most simplistic approach which in the long run could do as much damage as good. In essence the committee bill gives all authority to the Secretary of Labor in the areas of standard setting, investigation, adjudication, and prosecution. There are, in fact, no checks and safeguards placed on the power of the Secretary.

On the other hand, the bill introduced by Senator Dominick provides for the establishment of an independent Occupational Health and Safety Board which would be charged with the standard setting function. Therefore, the quasi-legislative function in this area will be separated into the standard setting Board on the one hand, and the enforcement powers of the Secretary of Labor on the other hand.

Mr. President, the committee bill represents a dangerous precedent in this most important area of occupational health and safety. The enormous amount of power given to the Secretary of Labor could easily be abused, culminating in a breakdown of existing Government neutrality in labor management relations. Under the committee bill, the Secretary of Labor could arbitrarily take action to shut down a plant when he considers that an imminent danger exists. I believe that this could create an extremely coercive situation. The substitute bill correctly places this function in U.S. district courts where such action would normally ensue.

This bill should be corrected so that Government, labor, and management have an equal stake in improving safety conditions. The committee bill relegates the employer to a very minor role in the pursuit of better working conditions. The passage of legislation does not automatically improve a given situation. In this particular case, if we are to pass legislation we must insure that employers and employees alike have a stake in improving these conditions. Labor-management relations can only improve if a sense of harmony and cooperation between employer and employee exists, independent of an omnipotent centralized voice from Washington. The Dominick substitute makes these needed corrections and, therefore, I urge its passage.

THE PRESIDING OFFICER (Mr. Dole). The question is on agreeing to the motion of the Senator from New Jersey to lay on the table the amendment in the nature of a substitute offered by the Senator from Colorado (Mr. Dominick).

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MERRILL (when his name was called). On this vote I have a pair with the Senator from California (Mr. Cranston). If he were present, he would vote "yea." If I were permitted to vote, I would vote "nay." I therefore withhold my vote.

Mr. SCOTT (when his name was called). On this vote I have a pair with the Senator from South Dakota (Mr. Mundt). If he were present, he would vote "nay." If I were permitted to vote, I would vote "yea." I therefore withhold my vote.

Mr. RIVERSIDE. I announce that the Senator from Nevada (Mr. Heller), the Senator from Idaho (Mr. Chesebrough), the Senator from California (Mr. Cranston), the Senator from Connecticut (Mr. Dodd), the Senator from Washington (Mr. Magnuson), the Senator from Minnesota (Mr. McCarty), the Senator from Rhode Island (Mr. Pell),

the Senator from West Virginia (Mr. Randolph), and the Senator from Maryland (Mr. Tydings) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. Ellender) is absent on official business.

I further announce that, if present, and voting, the Senator from West Virginia (Mr. Randolph), the Senator from Washington (Mr. Magnuson), and the Senator from Rhode Island (Mr. Pell) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Colorado (Mr. Allott), the Senator from Kentucky (Mr. Cooper) and the Senator from Hawaii (Mr. Fong) are necessarily absent.

The Senator from Florida (Mr. Gurney), the Senator from Maryland (Mr. Mathias), the Senator from Illinois (Mr. Percy) and the Senator from Maine (Mrs. Smith) are absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

If present and voting, the Senator from Kentucky (Mr. Cooper), the Senator from Florida (Mr. Gurney), and the Senator from Maine (Mrs. Smith) would each vote "nay."

The pair of the Senator from South Dakota (Mr. Mundt) has been previously announced.

On this vote, the Senator from Illinois (Mr. Percy) is paired with the Senator from Colorado (Mr. Allott). If present and voting, the Senator from Illinois would vote "yea" and the Senator from Colorado would vote "nay."

The result was announced—yeas 41, nays 39, as follows:

[No. 381 Leg.]

YEAS—41

Allen	Hart	Moss
Anderson	Hartke	Muskie
Bayh	Hatfield	Nelson
Brooke	Hughes	Pastore
Burdick	Inouye	Proxmire
Byrd, W. Va.	Jackson	Ribicoff
Cannon	Javits	Schweiker
Case	Kennedy	Spong
Eagleton	Mansfield	Stevens
Fulbright	McGee	Symington
Goodell	McGovern	Williams, N.J.
Gore	McIntyre	Yarborough
Gravel	Mondale	Young, Ohio
Harris	Montoya	

NAYS—39

Aiken	Fannin	Packwood
Baker	Goldwater	Pearson
Bellmon	Griffin	Prouty
Bennett	Hansen	Russell
Boggs	Holland	Saxbe
Byrd, Va.	Hollings	Smith, Ill.
Cook	Hruska	Sparkman
Cotton	Jordan, N.C.	Stennis
Curtis	Jordan, Idaho	Talmadge
Dole	Long	Thurmond
Dominick	McClellan	Tower
Eastland	Miller	Williams, Del.
Ervin	Murphy	Young, N. Dak.

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED 2

Metcalf, against.
Scott, for.

NOT VOTING—18

Allen
Bible
Church
Casper
Crawford
Dodd

Ellender
Fong
Gurney
Magnuson
Mathias
McCarthy

Mundt
Pell
Percy
Randolph
Smith, Maine
Tydings

So the motion to table Mr. Dominick's amendment was agreed to.

Mr. JAYES. Mr. President, may I inquire now from the manager of the bill and the leadership as to their further intention? I have consulted with the Senator from Colorado (Mr. Dominick) with respect to this matter, and I believe it should be possible to work out an agreement in time. Whether that can be done at this hour this evening I cannot guarantee, but certainly the disposition is there.

There are a considerable number of other amendments which the Senator from Colorado, myself, and others, have and I should very much like to know the intentions.

Mr. MANSFIELD. Mr. President, if I could have the attention of the Senator from Colorado and the Republican leader, would it be possible to arrive at a consent agreement to begin tomorrow, after conclusion of the morning business, and in that way give Members a chance to catch their breath overnight?

Mr. DOMINICK. I would say to the Senator from Montana, that would be fine with me.

Mr. SCOTT. Mr. President, I have no objection.

Mr. JAYES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HUGHES). The clerk will call the roll.
The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I have been assured by Senators most interested in the pending bill, those who have been doing most of the debating this afternoon, that there will be no difficulty in arriving at a time limitation at the conclusion of morning business on tomorrow. This has also been discussed with the distinguished Republican leader. Therefore, there will be no further action on this bill tonight.

There will be no further votes today, and there will be no further business unless Senators wish to speak.

The PRESIDING OFFICER. What is the pleasure of the Senate?

[From the Congressional Record—Senate, November 17, 1970]

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Mr. KENNEDY. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The ACTING PRESIDENT pro tempore (Mr. ALLEN). The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health; and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the unanimous-consent request?

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SAXBE. Mr. President, I send to the desk an amendment on behalf of myself, the Senator from Colorado (Mr. Dominick), and the Senator from Pennsylvania (Mr. Schweiker), and ask that it be stated.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 60, line 3, following the words "orderly manner," delete all of the next sentence beginning on line 3 with the words "An action" and ending on line 5 with the words "in effect.";

Delete all of subsection 11(b) on pages 60 and 61 and redesignate subsection 11(c) as subsection 11(b);

Amend subsection 11(c) (redesignated 11(b)), page 61, line 10, following the word "fails" by striking the words "issue an order or";

Amend subsection 11(c), page 61, line 11, following the word "under" by adding "subsection (a) of".

Mr. MANSFIELD. Mr. President, will the Senator yield.

Mr. SAXBE. I yield.

Mr. MANSFIELD. Mr. President, pending the arrival of the distinguished Senator from Colorado, insofar as other amendments and time on the bill are concerned, I ask unanimous consent that there be a limitation of one-half hour on the pending amendment, the time to be equally divided between the distinguished Senator from Ohio (Mr. Saxbe) and the distinguished manager of the bill, the Senator from New Jersey (Mr. Williams).

The ACTING PRESIDENT pro tempore. Is there objection?

The Chair hears none, and it is so ordered.

Who yields time?

Mr. SAXBE. I yield myself 5 minutes.

Mr. President, my amendment would help clear up one of the most controversial provisions of the proposed legislation: that is the provision which authorize Labor Department inspectors to close down an entire business. This authority would be exercised in those instances where in an inspector's judgment an imminent danger exists.

No one opposes the expeditious handling of "imminent danger" situations. In such instances the need to respond quickly in order to prevent serious injury or death is apparent.

However, the question involves the nature of that response. Should we authorize an inspector to close down a man's business and temporarily put perhaps hundreds of employees out of work? Or should we involve a third party, with perhaps the most disinterested and objective viewpoint obtainable, to make such an important decision?

The objective viewpoint is clearly always preferable when the rights, and, indeed, the very lives of individuals are involved.

I think it would be presumptuous and harmful of Congress to pass a law which would place such a heavy burden on a Department of Labor inspector. Under the provisions of S. 2193 the inspector would not only have to make a personal judgment as to whether an imminent danger existed, but he would have to determine that such a danger existed that would not allow time for obtaining the appropriate temporary court relief. S. 2193 would leave the decision in these matters up to the Federal district courts.

Seeking a temporary restraining order in the district courts is the way we have handled dangerous situations for decades. Does anyone believe this method is slow? Does anyone doubt that it is effective? I believe not. An inspector has no way of his own, when he goes into a plant, of enforcing any on-the-spot order he issues. In a tight situation, enforcement of the inspector's orders would have to come from the courts. Therefore, if the ultimate eventuality is enforcement in the courts, the prudent course would be to provide that the district courts handle the matter in the first place.

We should not permit the issue of how to handle an imminent harm situation stand in the way of the proposed legislation. Since there have been strenuous and widespread objections to giving an inspector the sweeping power to close down a plant, we ought to seek a compromise on this point. The substitute bill provided a solution but it was not accepted. I offer this as a separate amendment. I believe reasonable men will accept the solution I offer in this amendment, since they know that this course will provide an effective and fair method of safeguarding employees who find themselves in imminent danger situations.

Furthermore, to place such a heavy burden on an inspector would not allow a determination as objective as one by a court, and I believe it would be more unlikely that an inspector would close down a plant in an imminent danger situation than if he had the responsibility of going to court, because he would be reluctant to operate with this responsibility resting safely upon himself, or his immediate supervisor. The men and women who on occasion are exposed to such dangers will suffer if an inspector is reluctant to assume the awesome authority which would be granted in the bill without this amendment.

Let us be practical about the type of situation we are concerned with here. Only when a danger exists which can cause death or serious physical harm before it can be corrected will the imminent-danger provisions of either bill be utilized. Within this narrow range of situations, 99 percent of the employers will take immediate steps to eliminate the danger. In the 1 percent of cases where there is employer resistance and coercive measures must be utilized to protect exposed workers, one of two situations will probably exist:

First, an employer simply refuses to make needed corrections—in such cases, as I have already pointed out, court orders will be necessary; or

Second, an employer will have a serious doubt based on fact as to whether an imminent danger really exists—in these instances the objective disinterested view of a court is absolutely necessary.

In summary, I believe that the committee's closedown provision in the bill is unnecessary, harmful, and unfair as it relates to employees and employers. I suggest that my amendment will make a better bill and will not interfere with the orderly procedure of enforcement.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. SAXBE. I yield 2 minutes to the Senator from Pennsylvania.

Mr. SCHWEIKER. Mr. President, the committee bill provides that under certain circumstances the Department of Labor itself, without a court order, would have the power to close down all or part of an industrial plant for 72 hours due to an imminent danger.

The amendment which I am cosponsoring with the Senator from Ohio (Mr. Saxbe) would strike out this section which is section 11(b). The effect of our amendment would be to require the Department of Labor to go to a Federal district judge and obtain a court order in all cases where it desires to order a plant closed down. Our amendment would not detract in my opinion from the safety features of this bill but it would afford to employers—as well as employees who might be thrown out of work by some arbitrary shut-down—a greater right to be heard before the Federal Government took drastic action affecting them.

Mr. President, the closing down of an industrial plant is indeed a drastic remedy. If Congress is going to grant this power in this legislation, then we must be sure that due process is observed through a judicial hearing. In the average case where the Department of Labor finds a real imminent danger in a plant, I would expect the employer to agree with the Department, and close the plant or the portion of the plant voluntarily himself. But if there is a difference of opinion between the Department and the employer, I feel the Department should have to sustain a burden of proof in persuading a Federal district judge that the closure of the plant is necessary. I believe that both the Department's side and the employer's side should be heard before such a drastic step is taken against the will of the employer and throwing employees out of work.

It must be remembered that we are speaking here of a situation of imminent danger. The bill defines "imminent danger" as "a condition or practice which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated."

Mr. President, I can hardly conceive of many instances when this whole provision—section 11—would actually come into play. Before this provision could apply, there would first have to be an imminent danger to the plant which was underscored by either the employer or the employees, or if it had been detected, reserved no corrective action or safety precautions. So we would have an imminent danger situation that was just sitting there awaiting the visit from a Federal inspector representing the Department of Labor.

Section 11 would not come into play until the Department of Labor representative advised the employer of the imminent danger and the employer refused to take any steps to safeguard his plant and his employees. This would be quite a rare occurrence, I believe. Employers do not want their plants to blow up any more than the employees do. But I am thinking that in some cases, the Department of Labor may not be infallible, and that the employer, if he has a real difference of opinion with the Department of Labor about the closing of his plant, should have a right to be heard by a judge. That is all our amendment would do.

I thank the Senator from Ohio for yielding to me.

MR. SAXBE. Mr. President, before proceeding further, I ask unanimous consent that the amendments be considered en bloc.

The Acting President pro tempore (Mr. Allen). Without objection, it is so ordered.

MR. SAXBE. Mr. President, I yield the floor.

MR. WILLIAMS of New Jersey. Mr. President, I will say at the outset that this provision, dealing with the closing of an operation where there is an imminent danger, reflected thorough consideration within the committee, where it was significantly revised.

I think it is clear that the concern that has been generated over the imminent-danger provision in the committee bill has been greatly exaggerated and blown out of all proportion to the legitimate concerns of industry.

The fact is that the safety laws of at least 29 States authorize administrative officials to deal with imminent danger situations. These "red tag" or "stop work" provisions typically empower the appropriate official of the State agency to post a notice or issue an order prohibiting the use of machinery, equipment, or work areas found to be dangerous.

The New York provision, in effect since 1909, is quite typical of these statutes. It provides:

If the Commissioner finds that any machinery, equipment, or device in any place to which the chapter applies is in a dangerous condition, or finds that any area to which the chapter applies is in a dangerous condition, he may arrest a notice to such machinery, equipment, or device, or post a notice in such area warning off persons of the danger. Such notice shall prohibit the use of such machinery, equipment, or device or prohibit further work in or proximity of such area until the dangerous condition is corrected.

The New York provision, in effect since 1909, is a classic in this area. Not only is it classic, but it has been in existence for just about 50 years. I will say that, with that experience of the second most populous State in the Union, and perhaps the second most highly industrialized State, we heard no testimony whatever that this kind of provision on imminent danger had been abused or had been treated arbitrarily.

In addition, various Federal statutes have imminent-danger provisions that permit administrative action to protect workers—including the Coal Mine Health and Safety Act enacted last year. And, just a few months ago, we passed the new Federal Railroad Safety Act which provides that if the Secretary of Transportation determines that any facility or piece of railroad equipment is unsafe, and creates an emergency situation involving a hazard of death or injury, “the Secretary may immediately issue an order prohibiting the further use of such facility or equipment until the unsafe condition is corrected.”

I think it most significant that throughout our lengthy hearings on the present bill, during which witnesses from all segments of industry appeared, we never once heard of a single instance in which any of these imminent-danger provisions had been abused—despite the fact that many of the State provisions have been in effect for a number of years—as far back as 1909 in the case of New York.

I should also emphasize that, during our committee deliberations, we gave extensive consideration to this provision. Even though no complaints had been received about the actual operation of the broadly worded provisions found in most State laws, we did our utmost to accommodate the concerns of industry, with the result that the provision now contained in the committee bill is far more narrowly drawn than most State laws or, indeed, the Federal statutes that are now in existence. I think it would be entirely inconsistent with the purposes of this bill to narrow this provision any further.

Mr. JAVITS. Mr. President, will the Senator from New Jersey yield?

Mr. WILLIAMS of New Jersey. I yield.

Mr. JAVITS. The Senator has said and knows that this is a very difficult provision because there is a grave danger of a drastic effect on the continuity of the industrial process by a closing. I wondered, as I read this last night in contemplation of the amendment, whether the Senator might not look favorably on perfecting the original bill by requiring the concurrence of the Secretary himself for a closing rather than a regional official.

I am inclined to decide the issue for myself on the side of the committee's view, although this was one of the most closely divided votes we took in the committee. I just ask the Senator that question specifically, in order to meet what I consider to be a real problem which I think the bill raises in its present form. Would it not be desirable simply to elevate that kind of decision to the secretarial level?

Mr. WILLIAMS of New Jersey. If the Senator will recall, first, we dealt in committee with the fear of abuse by an individual, that one person should not have this authority to close down a plant or part of a plant where he found an imminent danger. To protect against the one-man decision, we included by amendment in committee the provision that a regional representative of the Labor Department must concur in the original finding. That was our first amendment.

The next saving factor was the provision for continuous process operations, and to permit personnel to remain to make a safe and orderly shutdown of a dangerous operation.

I think we have fully protected those areas that caused concern. I do not know what would be the practical effect of saying that, where there is a finding that it should be closed, that this should be checked and concurred in by the Secretary of Labor. I do not know whether that would be practical or not.

MR. JAVITS. I say to the Senator, if he would allow me, by yielding further, that I think it is practical. I think it would give a better feeling and a greater weight of authority. I should have thought of this in the committee. Even if the Secretary devolved that responsibility, there would still be the fact that a businessman—and that is what I think my colleagues from Pennsylvania and Ohio are concerned about—facing such a provision, at least he would have the satisfaction of knowing that a Cabinet officer would have to concur and, for all practical purposes, if the businessman had any appreciable plant, the Secretary probably would, anyhow. No regional official would take the responsibility of shutting down a plant which employs thousands of people unless he checked back first with the Secretary in Washington.

I think that is really the distinction, without any deep difference. It would give a better feeling to the business community. I would therefore hope that before or after this amendment is decided, the Senator from New Jersey would give serious consideration to that change.

MR. WILLIAMS of New Jersey. As it is now, would the Senator agree that any action taken would be the Secretary's responsibility and would have the Secretary's name signed to the action, if not in personal fact?

MR. JAVITS. As a practical matter, I think that if the Secretary wanted to shrug it off or avoid the responsibility, he could walk away from it as written now. However, I hardly envisage a Cabinet official being that irresponsible, but it could be done. I think the converse of the proposition is that if that is so, why not give it to the Secretary and make him take the responsibility?

MR. SAXRE. MR. President, I yield myself 5 minutes.

THE PRESIDING OFFICER. The Senator from Ohio is recognized for 5 minutes.

MR. SAXRE. MR. President, I cannot agree with either my friend, the Senator from New York, or my friend, the Senator from New Jersey, on this matter. I think it is a judicial function.

When this subject was discussed we went into great length on an individual machine, an oil slick on the floor, noxious fumes being emitted, or a leaky pipe—things that would create an imminent danger. When they red tag this, they close down this machine or this area of the plant, and not the plant.

No one would disagree with an inspector going in there and saying, "This machine is closed down." I do not think he would ever resort to the courts. This would protect those individuals who are working on that machine in that area.

On the other hand, when they want to close an entire plant because of noxious fumes or because of some imminent danger to the structure, then I think we are going to have more difficulty in getting an inspector to do this on his own motion or by calling his superior or the Secretary of Labor than if he could simply go to court and say, "This is what I find in the plant, and this plant refuses to cooperate. Therefore, we ask for legal action."

I think it is entirely reasonable that this should be the ultimate weapon. This is what will be the ultimate weapon, anyway, because this man is not a policeman. The inspector cannot go down there and run in and bellow "Stop." He would have to get a policeman to go in

there if the man refuses to do anything. And the U.S. marshal is an agent to the court. The marshal would come in and correct this situation if imminent danger is shown to the court.

If we try to do this through the Secretary of Labor or by his agent or the superior of the inspector, we are going to have more difficulty in closing a plant, I believe, than if they can go downtown to the local court and say, "We have a situation out here and we think you should grant this order."

I agree with my friend, the Senator from New Jersey, that States do have this power. But I also find on further investigation that it is a power seldom used. It is seldom used because the inspector is reluctant to use it even when his superior agrees. Then, when he does want to use it, as I am informed in some situations in New York, he, not being a policeman, cannot do it. He has to go to the court and go out and get a policeman to enforce the order.

I suggest that, by this amendment, we are doing what is ultimately going to be done any way. The convenience of the court and the complete practicality of the matter seems to me to suggest that this is a wise move.

Mr. President, I yield to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCHWEIKER. Mr. President, I would like to respond to a few of the arguments that have been presented on behalf of the bill as it now stands.

In the committee I offered this very amendment that the Senator from Ohio and I are cosponsoring. We were defeated in the committee.

The Senator from New Jersey said that 29 States now have this provision and that therefore there is no danger in giving this vast authority to the Federal Government.

I would like to point out that the reason we are writing this law is because the present laws in the States have not been adequate. They have not been enforcing the present laws in the States. The present laws have not met the needs. There has not been a followup on enforcement or a serious effort made to make the laws effective.

We cannot very well turn the argument around and say that because this type of provision works fine in 29 States we are writing it into our new Federal law. It has not worked fine in 29 States. That begs the question. The point is that the States have rarely invoked the power. They have hardly ever used it. That is why we are writing a Federal law.

I would like to say that when we are dealing with a State government we are at least one step closer to the people. The State government is one layer of government closer to the people than is the Federal Government. I am sure that any aggrieved party seeking a government hearing feels that he has a closer relationship to his State capital or to his local government than he would if he were to come to Washington and go to the bureaucracy involved, the Department of Labor, to seek his remedy in that particular way.

I do not see anything unreasonable in requiring the Labor Department to contact a Federal district judge in this situation. One can reach a Federal district judge within a matter of minutes. It can be done as quickly as one can reach a departmental inspector in the Department of Labor or the Secretary himself.

THE PRESIDING OFFICER. The time of the Senator has expired.

MR. SAXBE. Mr. President, how much time do I have remaining?

THE PRESIDING OFFICER. The Senator from Ohio has 3 minutes remaining.

MR. SANBEE. Mr. President, I yield 1 additional minute to the Senator from Pennsylvania.

THE PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 1 additional minute.

MR. SCHWEIKER. Mr. President, a Federal judge can be reached at any time of the day or night. There would be no unreasonable delay. Therefore I do not see why we cannot assure that due process is available before a lot of people are thrown out of work or an enterprise is shut down. There should be due process so that the people involved, both the employers and employees, will be sure of a fair hearing in court. That is what our amendment seeks to do.

MR. WILLIAMS of New Jersey. Mr. President, first of all the bill provides that the inspector must go to court to get an order to close down an operation where there is imminent danger. What does "imminent" mean? It refers to a peril or disaster that can happen immediately. The bill requires that he get a court order unless the danger is of such imminence that there is no time to do so. Only if they do not have time to find the judge or the peril or likelihood of disaster is too immediate, does this authority within the Labor Department come into being.

MR. SAXBE. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

MR. WILLIAMS of New Jersey. Mr. President, how much time remains?

THE PRESIDING OFFICER. The Senator from New Jersey has 3 minutes remaining. The Senator from Ohio has 2 minutes remaining.

MR. WILLIAMS of New Jersey. Mr. President, I stress again that this authority arises when there is an immediate peril, danger, or misfortune. They have to get a court order unless doing so would take so long that the danger could develop and great injury or death occur.

As to the other operations of the plant, we are mindful of the need to not bank the furnaces and shut down the whole operation. This provision is zeroed in on the immediate imminent danger. It cannot be arbitrary because it is checked against higher authority in the Labor Department. The order can be in effect only for 72 hours and then, within that period of time, they have to go to court.

THE PRESIDING OFFICER. Who yields time?

MR. SAXBE. Mr. President, I yield myself the remainder of my time.

THE PRESIDING OFFICER. The Senator from Ohio is recognized for 2 minutes.

MR. SAXBE. Mr. President, I do not find the argument persuasive on the basis that we are not dealing with abstractions. We are dealing with a practical situation in a plant, the practical situation where danger exists in a limited area concerning one machine, or it could exist on a broader scale.

What we are talking about is a danger that the management will not recognize because if it is recognized, management would immediately shut it down. I cannot fancy a situation where management would not close down a machine, an area, or a plant where an inspector, the Fed-

eral Government, or the Department of Labor comes in and says, "There is a situation that creates great danger to that man; danger to life and limb." I think in such a situation management would act immediately; so we are talking about the unique situation where there is serious disagreement as to whether there is imminent danger. I am referring to the situation where there is serious disagreement. Management says, "There is no danger here; I can explain it all; the inspector just does not understand what we are talking about. This pipe is not going to explode; this machine is safe."

In that instance there is a disagreement based perhaps on lack of knowledge or lack of understanding of the situation. For years we have settled such disputes in court and so on the very rare occasions where management and an inspector disagree as to the extent of danger I believe the court should have the opportunity of making the decision as to who is right, because if both management and the inspector agree there is no problem, they are not going to court. They both say, "Yes; there is danger. Let us correct this situation." Then, it never leaves the plant. So when the matter gets to court there is a disagreement. We have traditionally settled disagreements in court in this country, and I suggest it is the way to settle disagreements in this matter.

Mr. JAVITS. Mr. President, will the Senator from New Jersey yield?

Mr. WILLIAMS of New Jersey. I yield 2 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, this is not a light issue; it is a real and important issue. If this amendment fails, and I did vote against it in committee for many reasons I have mentioned in debate, I shall ask the manager of the bill to accept an amendment which will vest this authority in the Secretary or other high officials of the Labor Department. I believe that is a fair compromise of the difficulty with which we are faced. I hope he will accept it should this amendment fail.

I thank the Senator for yielding.

The PRESIDING OFFICER. Who yields time?

PRIVILEGE OF THE FLOOR

Mr. JAVITS. Mr. President, I ask unanimous consent that Mr. Mittelman of the committee staff be permitted to be in the Chamber.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that pending the arrival of the Republican leader or the acting Republican leader I be permitted to suggest the absence of a quorum so that when they arrive I can make a unanimous-consent request which I think will be acceptable.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

MR. MANSFIELD. Mr. President, after clearing the matter with all Members concerned, I am about to propound a unanimous-consent request.

I ask unanimous consent that on the Javits enforcement amendment there be a time allocation of 1½ hours, the time to be equally divided between the Senator from New York (Mr. Javits) and the Senator from New Jersey (Mr. Williams), and that there be 30 minutes on any amendment thereto, equally divided on the same basis.

THE PRESIDING OFFICER. Is the objection? The Chair hears no objection, and it is so ordered.

MR. MANSFIELD. Mr. President, I ask unanimous consent that on the Donnick criteria amendment there be a time allocation of 40 minutes, to be equally divided on the same basis, and 30 minutes on any amendment thereto, again equally divided on the same basis.

THE PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

ORDER OF BUSINESS

MR. MANSFIELD. Mr. President, for the information of the Senate I think I should state that immediately after the conclusion of the vote, the Senator elect from Illinois, Mr. STEVENSON, will be sworn in.

THE PRESIDING OFFICER. All time having expired the question is on agreeing to the amendment of the Senator from Ohio (Mr. Saxton). On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

MR. KENNEDY. I announce that the Senator from Indiana (Mr. Bayh), the Senator from Nevada (Mr. Bible), the Senator from Nevada (Mr. Cannon), the Senator from Connecticut (Mr. Dodd), the Senator from South Carolina (Mr. Hollings), the Senator from Rhode Island (Mr. Pell), the Senator from Georgia (Mr. Russell), the Senator from Alabama (Mr. Sparkman), and the Senator from Maryland (Mr. Tydings) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. Ellender) is absent on official business.

I further announce that, if present and voting, the Senator from Indiana (Mr. Bayh) would vote "nay."

MR. GRITTIN. I announce that the Senator from Hawaii (Mr. Fong) is necessarily absent.

The Senator from Kentucky (Mr. Cooper), the Senator from Florida (Mr. Gurney), the Senator from Illinois (Mr. Percy), and the Senator from Maine (Mrs. Smith) are absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The Senator from Arizona (Mr. Goldwater) and the Senator from South Carolina (Mr. Thurmond) are detained on official business.

If present and voting, the Senator from Kentucky (Mr. Cooper), the Senator from Florida (Mr. Gurney), the Senator from South Dakota (Mr. Mundt), and the Senator from Maine (Mrs. Smith) would each vote "yea."

On this vote, the Senator from South Carolina (Mr. Thurmond) is paired with the Senator from Illinois (Mr. Percy). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Illinois would vote "nay."

The result was announced—yeas 40, nays 42, as follows:

[No. 382 Leg.]

YEAS—40

Aiken	Ervin	Prouty
Allen	Fannin	Saxbe
Allott	Griffin	Schweiker
Baker	Hansen	Scott
Bellmon	Holland	Smith, Ill.
Bennett	Hruska	Spong
Boggs	Jordan, N.C.	Stennis
Byrd, Va.	Jordan, Idaho	Stevens
Cook	Mathias	Talmadge
Cotton	McClellan	Tower
Curtis	Miller	Williams, Del.
Dole	Murphy	Young, N. Dak.
Dominick	Packwood	
Eastland	Pearson	

NAYS—42

Anderson	Hartke	Metcalf
Brooke	Hatfield	Mondale
Burdick	Hughes	Montoya
Byrd, W. Va.	Inouye	Moss
Case	Jackson	Muskie
Church	Javits	Nelson
Cranston	Kennedy	Pastore
Eagleton	Long	Proxmire
Fulbright	Magnuson	Randolph
Goodell	Mansfield	Ribicoff
Gore	McCarthy	Symington
Gravel	McGee	Williams, N.J.
Harris	McGovern	Yarborough
Hart	McIntyre	Young, Ohio

NOT VOTING—18

Bayh	Fong	Percy
Bible	Goldwater	Russell
Cannon	Gurney	Smith, Maine
Cooper	Hollings	Sparkman
Dodd	Mundt	Thurmond
Ellender	Pell	Tydings

So Mr. Saxbe's amendment was rejected.

Mr. WILLIAMS of New Jersey. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. YOUNG of Ohio. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

* * * * *

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

The Senate continued with the consideration of the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working

conditions; to provide for research, information, education, and training in the field of occupational safety and health; and for other purposes.

AMENDMENT NO. 1061

Mr. JAVITS. Mr. President, I call up my amendment No. 1061.

The PRESIDING OFFICER (Mr. GRAVEL). The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

(The text of Amendment No. 1061 is on p. 381.)

* * * * *

The PRESIDING OFFICER. This amendment is under controlled time, for an hour and a half.

Mr. JAVITS. I yield myself 10 minutes.

Mr. President, if I may have the attention of Senators, I can explain what this is about very briefly.

The big issue on this bill—and certainly the Senate has made that clear by its votes—is the question of how it is to be enforced and how standards are to be promulgated. The amendment I have just called up deals with the matter of enforcement. The question of the promulgation of the standards remains in the Secretary, although there probably will be an amendment later to deal with that specific point, in a way different from that in which it was dealt in Senator DOMINICK's substitute yesterday. But the key issue which has worried American business is, How is this very important piece of legislation to be enforced?

I am offering the administration's version of how it should be enforced. I introduced the administration's bill originally, and the provision I now offer as an amendment is consistent with the approval of that bill. It creates a review commission which will deal with all complaints referred to it by the Secretary and which will have the same type of authority that the Federal Trade Commission exercises: The power to issue a cease and desist order which, if challenged within a given period of time, can be reviewed by the Circuit Court of Appeals. Its operation is stayed if the Circuit Court of Appeals so orders. If the Secretary desires to enforce the order through the contempt power, similarly, he can go into court in order to get the Circuit Court of Appeals to enter an order for the specific purpose, and then that order can be enforced through the contempt powers of the Circuit Court of Appeals. It is the traditional Federal Trade Commission type of procedure.

Mr. HOLLAND. Mr. President, will the Senator yield for a question?

Mr. JAVITS. I yield.

Mr. HOLLAND. Would the commission which would be set up by the Senator's amendment be within the Labor Department and controlled by the Labor Department or would it be an independent commission?

Mr. JAVITS. Autonomous and independent. Perhaps it would be housed in the Labor Department, or administratively it might have employees who are common, but it is expressly set forth to be an independent commission, established for the purpose of dealing with these complaints and passing on them.

Mr. HOLLAND. I thank the Senator.

Mr. JAVITS. It would not be a Labor Department instrument. Indeed, I might say to my distinguished colleague that yesterday, when we were arguing the Dominick substitute, I made the point that a Secretary could set up, if he wished, a committee or commission—other Secretaries have—to exercise his power; but that commission would, as the Senator's question implies, be under his authority. That is not so under my amendment. This is an autonomous, independent commission which, without regard to the Secretary, can find for or against him on the basis of individual complaints.

Mr. HOLLAND. I thank the Senator. I shall support his amendment, because I believe that that kind of independent enforcement is required under the circumstances.

Mr. JAVITS. I thank my colleague very much.

Mr. President, one of the interesting things which comes out of this amendment, which interests me greatly, is the fact that I offered this amendment in committee as the "compromise." I had hoped that it would be accepted and supported. But it had the opposition, for reasons which absolutely escape me, of organized labor. One would think that organized labor wanted the certainty and the celerity which would come from this kind of enforcement, because there is speedier action here. It may be speedier action by as much as 18 months, in this way: The present scheme of enforcement requires the Secretary to go into court in order to enforce an order of enforcement which he makes. This order, which is made by the Commission, is self-enforcing unless stayed by the Court of Appeals. Immediately, there is a diminution of the time involved.

Second, this amendment provides that if the hearing examiner's report is not contested and the Commission does not order it reviewed, it becomes final, within the same procedures of the Commission—a very quick way of dealing with relatively minor situations.

It seems to me that this gives everything one would ask in the way of assurance, both to management and to labor. Yet, though management wanted it very much, organized labor apparently was opposed to it.

One final thing which is very interesting to me: The Administrative Procedure Act applies anyway, whether the Secretary is the enforcing agent or the Commission is the enforcing agent. So there is no diminution of the rights of anybody, nor denial of due process, and at the same time greater celerity is given and greater confidence that violations will be considered by a quasi-judicial authority expressly delegated for that purpose.

The importance of this particular measure is not so much in the absolutes which are involved. In an absolute sense, in view of the checks and balances which the judicial system imposes on the Secretary, one might think that enforcement by the Secretary would be more hedged in, more subject to judicial argument, and so forth, than even the determinations by this commission; but, as we all know, the climate in which things are done becomes critically important. We see that in many pieces of legislation. The business community feels deeply on this matter, which can be vexatious—there is no question about that and we must recognize it—as there can be all kinds of complaints and difficulties, and expensive difficulties, created for American business, so

that apparently the business community feels an infinitely greater assurance with this kind of commission than with enforcement by the Secretary of Labor.

In my judgment, it would be better all around. I have been unable to understand up to now—perhaps those who oppose the amendment will enlighten me better than they did in committee—why it ran into an absolute, hard and unyielding opposition. As many Members have told me, if this particular amendment had been accepted in the Committee on Labor and Public Welfare, we would hardly be arguing about any part of this bill now as, generally speaking, we did balance out most of the bill pretty well, as the votes in the Senate have demonstrated.

Thus, again, quoting one of our Members, this is the nut in the coconut. This is what it is all about. It seems to me, in view of the fact that it will give a sense of greater assurance to the business community than enforcement by the Secretary of Labor, it certainly is not any tougher than his enforcement, in terms of the benefits which accrue from a piece of legislation like this to the worker, nor is it less advantageous to the worker because, if anything, it accelerates the time within which decisions can be made.

It seems to me this is the fair way to balance out the bill.

One other point which is critically important: What is the difference between a board to establish the standards and a commission to enforce them, and why, in my judgment, is it more important to have an autonomous and independent commission even than to have some form of board to promulgate certain standards?

The reason is this: The enforcement of orders is an adjudicatory act, whereas the establishment of standards is a deliberative act. There are serious penalties involved for the individual enterprise. It is a case by case proposition. It does not apply across the board to every member of industry. One particular rubber company, for example, can be materially disadvantaged by a finding against it in a given case, whereas established standards are an across-the-board proposition. It is entirely practical to be rather deliberate about that in hearings before the Secretary of Labor or officials of that Department. They can go into the thing deeply and if they want to contest it there is plenty of opportunity to go into court and contest the rule. But enforcement of an order or the making of an order is an adjudicatory action.

Therefore, I can understand that even people who would wish to go along with this bill in the main—and I am one of them—would draw back on the question of enforcement even if not on the question of promulgation of the standards.

My experience as a lawyer for many years tells me that I would feel entirely comfortable even if the Secretary promulgated the standards. I know that I would have plenty of time to contest them, but with respect to an order with regard to a violation, I would be worried if I were a lawyer for a particular concern. I would welcome the fact that we have more than one man and that we have an established practice of quasi-judicial character and a separation, a degree of autonomy in the commission which distinguishes it from the authorities who have done to investigating, the reporting, and so forth, in respect of the original complaint of the violation.

Mr. President, for all of those reasons, I would like very much for the Senate to vote for this particular amendment which would be a measure of real assurance so far as the business community is concerned which is deeply worried—I do not understand why—about this bill.

Mr. President, I ask unanimous consent to have the name of the Senator from Colorado (Mr. Dominick) added as a cosponsor of the amendment.

The PRESIDING OFFICER (Mr. Spong). Without objection, it is so ordered.

Mr. JAVITS. The Senator from Colorado has done an extraordinary difficult and able job in respect of all this legislation. I invite Senators to examine the report on the bill which catalogs the specific contributions made by the minority to indicate that certainly we did not approach lightly the idea of seeking to amend the bill, or change it in any way, but that it had most profound consideration.

The record of the amendments offered by various Members of the minority, which were adopted in the main, is contained on pages 57, 58, and 59 of the committee report.

Mr. President, I reserve the remainder of my time.

Mr. WILLIAMS of New Jersey. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER (Mr. Spong). The Senator from New Jersey is recognized for 5 minutes.

Mr. WILLIAMS of New Jersey. Mr. President, I should like to inquire of the Senator from New York whether, during the period I was distracted in the Chamber, he had developed the makeup of the panel on enforcement.

Mr. JAVITS. The panel would be three members appointed by the President for a specific term—2, 4, or 6 years. A term would normally be for 6 years. The analogies between the qualifications of members and the authority of the Commission, and so forth, would be with the Federal Trade Commission.

We used in the original text of the amendment the word "panel," but that seemed to water it down so that it did not represent it as it is. So we substituted the word "commission." That is the word used by the Senator from Colorado (Mr. Dominick) in his substitute, which we think is more accurately descriptive of an autonomous body which has tenure and quasi-judicial power.

Mr. WILLIAMS of New Jersey. From what areas would these members be selected?

Mr. JAVITS. That would depend on the President, but of course, the nominations would be subject to the advice and consent of the Senate so that the Senate could be a monitor, as it were, to see that they were people who had real qualifications to do the job.

Mr. WILLIAMS of New Jersey. In other words, there are no congressional guides for the selection of members of the Commission.

Mr. JAVITS. It will be done in accordance with the way it is done in other commissions of the same character. The protection there is confirmation by the Senate.

Mr. WILLIAMS of New Jersey. One of the last Commissions to be picked—I do not know that that is the descriptive title of the enforcement group—but that Commission was the metal and non-metallic mines enforcement body. Is the Senator familiar with that?

MR. JAVRS. I am familiar with that. We do have an enforcement body in that bill, but I am not aware of any particular qualifications which may have been set.

MR. WILLIAMS of New Jersey. As I recall it, the congressional guides that were given to the President for appointment described the areas of professional competence and areas of economic activity to be drawn from. As I recall it also, the congressional guides were that they should be drawn from labor, industry, and professionals in the areas.

MR. JAVRS. I might say to my colleague from New Jersey that we normally seek nominees with those qualifications for advisory committees but not for commissions. I believe, for example, that the authority of a commission should be the same authority as we would give to a judge. My view is that a broad range of business can be covered and the factors of judgment taken into consideration, as well as the weight of evidence, and so forth, which would be required; so that I believe we would be best advised to follow the traditional practice which we follow with many commissions, many of which deal with problems of considerable expertise. In the Interstate Commerce Commission and other agencies, the appointments are made by the President subject to the confirmation of the Senate, which gives us the safeguard we would require.

MR. WILLIAMS of New Jersey. Mr. President, I oppose the amendment offered by the Senator from New York.

In stating why I oppose this amendment to establish a separate panel to adjudicate enforcement cases, I should first make clear that there is no real or basic difference in the enforcement procedures that would be followed under the committee bill and those provided for in the pending amendment.

Under the committee bill, if an employer decides to contest a citation, he would have an opportunity for a hearing before a Labor Department hearing examiner. The employer could request the Secretary of Labor to review the hearing examiner's ruling, and could obtain further review in the courts of appeals.

Under the pending amendment, the employer would have his hearing before a hearing examiner appointed by the review panel, with an appeal to the panel and further review in the courts of appeals.

THE PRESIDING OFFICER. The time of the Senator has expired.

MR. WILLIAMS of New Jersey. Mr. President, I yield myself 5 additional minutes.

THE PRESIDING OFFICER. The Senator from New Jersey is recognized for 5 additional minutes.

MR. WILLIAMS of New Jersey. Mr. President, thus there is no difference in the due process that is provided by the two proposals. Under each, the employer is given a full Administrative Procedure Act hearing, with ultimate appeal to the courts.

The argument has been made against the committee bill, however, that due process suffers if adjudication functions are placed in the same agency as enforcement functions. It is contended that the head of the agency would have a reluctance to rule in favor of an employer because he would not want to repudiate his own department's inspectors.

This argument overlooks the fact that the administrative mechanism provided in the committee bill is the same as that which characterizes a vast array of other Federal regulatory programs.

For example, the Federal Trade Commission, the Securities and Exchange Commission, the Interstate Commerce Commission, and the Federal Power Commission, all combine in a single agency both investigative or prosecutorial functions, together with adjudicatory functions. Any of these agencies, in ruling in favor of a respondent, would in a sense be repudiating their own staff members who had investigated or presented a case, but there has been no evidence over the years that rulings are prejudiced by this consideration.

I would like to emphasize that. No evidence was brought to us in the hearing process on the bill. No instances were raised in executive meetings of the committee of any cases where rulings had been prejudiced because of these considerations.

This traditional assignment of combined functions to a single agency has, of course, not been confined to the multimember agencies I have mentioned, for a great many regulatory programs are administered by Cabinet officers with responsibility for all of the functions necessary to the program. And I have previously pointed out that a number of these programs are in the safety area.

Here we are concerned directly with the health and safety area, and so they are directly analogous. For example, the three statutes which impose safety and health obligations on Government contractors—the Walsh-Healy Act, the Service Contract Act, and the Construction Safety Act—all give the Secretary of Labor responsibility for investigating compliance with the standards he has set, and for adjudicating those cases where violations are alleged. The same combination of responsibilities is also given the Secretary of Labor under the Longshore Safety amendments.

Similarly, under the Coal Mine Health and Safety Act, the Secretary of the Interior adjudicates the violations which his inspectors have found. And in the Department of Transportation, the Federal Highway Administrator has authority to issue cease and desist orders under the Motor Carrier Act after ruling on violations prosecuted by his subordinate Bureau of Motor Carriers.

A great many other instances where this same combination of functions is lodged within a single executive department could also be cited in other areas of regulatory activity.

Mr. JAVITS. Mr. President, will the Senator yield so that we may get the yeas and nays?

Mr. WILLIAMS of New Jersey. Mr. President, I yield to the Senator from New York.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. WILLIAMS of New Jersey. Mr. President, for example, the Commodity Exchange Act, the Packers and Stockyards Act, the Perishable Agricultural Commodities Act, and the Federal Seed Act, all give the Secretary of Agriculture authority to investigate violations of those statutes or of applicable regulations, and to issue cease and desist orders or to suspend the right of a business to engage in a regulated activity because of such violations. Similarly, the Secretary of the Treasury, under the Federal Alcohol Administration Act and the Narcotics Manufacturing Act, investigates and adjudicates violations, and issues orders which may terminate the right of a respondent to engage in certain businesses. Under the Small Business Investment Act, the Small Business Administrator has authority to issue cease

and desist orders for violations which he has uncovered. And the Postmaster General has responsibility for adjudicating a variety of matters investigated by his Department under the postal laws.

Indeed, most agencies of Government administer one or more statutes which provide the agency head with responsibility for exercising the same combination of functions as is found in the bill now before us.

We will note that two of the statutes I have mentioned—the Coal Mine Health and Safety Act and the Construction Safety Act—were passed during this Congress, and we obviously concluded that this combination of functions in one agency was entirely appropriate. Indeed, when we were considering the Coal Mine Safety Act just a little over a year ago, we gave specific consideration to a proposal to establish an independent board of review for enforcement actions. Despite the fact that it was urged upon us that such an independent board was necessary to preserve due process, we rejected that proposal by a 53-to-24 vote.

That was a significant rejection of this proliferation of bureaucracy beyond what is done in all agencies and all departments.

I know of nothing that has happened since that time to warrant our taking a contrary position now. The simple fact is that the committee bill merely adopts a method of administration which has long since become a fixture in our regulatory process. It is time tested, in my judgment, and it is time honored.

In all these other instances, the Congress has recognized that due process is protected by the internal separation of function requirements mandated by the Administrative Procedure Act. That act applies in this area we are talking about now in enforcement and in adjudication.

These requirements prescribed that those employees of the agency who are engaged in investigation or prosecution shall be separated from those engaged in adjudication, and prohibits those engaged in the performance of investigative or prosecuting functions from participating or advising in the decisionmaking, except as a witness or counsel in public proceedings. I see no basis for concluding that these requirements will not be as effective in preserving fairness and due process under this act, as they have been under others which Congress has adopted.

Under these circumstances, there is no good reason to establish another new agency. I would say this is pioneering. That is a mild phrase. The amendment suggests a radical departure from time honored and time tested methods within departments, agencies, and commissions.

We already have too many agencies that hear cases. There is no need to create another when a perfectly acceptable forum is readily available.

I might point out, too, that separation of these functions between different agencies may be seriously detrimental to the regulatory process. Mr. William L. Carey, former Chairman of the Securities and Exchange Commission, pointed out in an American Bar Association *Journal* article:

Both rulemaking and adjudication are necessary tools for effective regulation. To divorce the adjudication from the rulemaking and administrative functions would fragment the regulatory responsibility and deprive both the administration and the rulemakers of valuable feedback from the total regulatory process.

The argument has also been made that under the pending amendment, speed of enforcement would be increased because the amendment includes a provision for orders to be self-enforcing at the end of the administrative process, rather than at the end of judicial review, as in the committee bill, and because it includes a further provision for discretionary review of hearing examiners' decisions.

I am doubtful that these provisions will result in as much time savings as has been projected.

For example, I believe the courts will not generally let an appeal right be substantially nullified by permitting a penalty to run while a case is under court review, and stays would therefore usually be granted by the courts.

In any event, I do not think these speed-up features of the pending amendment are arguments in favor of accepting the concept of a separate enforcement panel, because they could just as well be offered as amendments in conjunction with the bill's present provision for enforcement by the Secretary.

In conclusion, therefore, I would urge my colleagues to support the committee bill's provision for handling enforcement matters—a provision which so closely parallels those provisions we have adopted for innumerable other regulatory programs, including last year's Coal Mine Safety Act.

Mr. JAVITS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. JAVITS. Mr. President, the Senator from New Jersey, I think for lack of a better explanation, has erected a strawman and then proceeded to knock down that strawman, and that strawman is due process. There is no need to knock down that strawman. I have not established him as an argument for this approach.

Certainly, there is due process in the Secretary, and if there was not, the courts would overturn it.

The important think is to inspire confidence in the community that we expect to obey this law, and that is the basis on which I approach the matter. There is no question about the fact that the community will be considerably reassured in the difficult, and one might say dangerous situation, by the adoption of this amendment.

The best argument against the argument made by the Senator from New Jersey is the committee report itself which indicates the unbelievable ramifications of this law and the reach of this law into countless numbers of workplaces throughout the country. I invite Senators to look at the background for this bill and the literally thousands of cases of occupation health and safety situations which would be reached by this bill.

Certainly there is due process in the Secretary and certainly in many cases it is administered in this way, but in many cases it is not, and I am referring to the Secretary.

The Senator from New Jersey himself was quick to raise the issue of the coal mine safety bill and the question of safety where there is a body similar to the one we are seeking to appoint here. There are just as many precedents for what we are recommending as leaving it in the Secretary; so the issue is not a matter of due process or general tradition or general procedure. It is a matter of designing a particular remedy for a particularly difficult situation.

This is a situation which can disturb very seriously and be very costly to the business community. I feel very strongly that a great element of confidence will be restored in how this very new and very wide reaching piece of legislation will be administered if the power to adjudicate violations is in the hands of an autonomous body, more than one man, and more than in the Department of Labor itself. It seems a small price to pay for the confidence that will be inspired by the adoption of this amendment. That is the basis on which I make my argument. Yesterday I argued that there is due process in everything in this bill now. I would not have supported it in committee if I felt otherwise. That is not the point. We have a difficult piece of legislation reaching the whole of American business, involving millions of employees and tens of thousands of employers. This will give them a greater measure of confidence. It seems logical that we do it this way.

That argument is especially reinforced by the fact that it is a much more efficient procedure we are outlining here than the procedure solely in the hands of the Secretary. For example, here is a record of what needs to be done if the Secretary addressed violations himself.

Under the committee bill, no enforceable order to correct a violation would issue until the completion of all administrative and judicial review proceedings. This would involve, at a minimum in a contested case: First, hearings by a trial examiner; second, mandatory review of the decision by the Secretary or his designee; and, third, review by a court of appeals. It is doubtful that this process could be completed in less than 18 months—2 years would be more a realistic estimate—in a seriously contested case.

Contrast that with my amendment. Under my amendment, an enforceable order would issue at the end of the administrative review stage, rather than after judicial review—unless the court of appeals issued a stay. Furthermore, the administrative review stage itself would be shortened by 3 to 6 months in many cases by making review by the Panel of trial examiners' decisions discretionary. If review were denied, the trial examiners' decision would automatically become the final order of the Panel and enforceable as such.

THE PRESIDING OFFICER. The time of the Senator has expired.

MR. JAVES. I yield myself 5 additional minutes.

THE PRESIDING OFFICER. The Senator is recognized for 5 additional minutes.

MR. JAVES. Hearings in enforcement cases by an independent panel also more closely accords with our concept of fairness. That is what I am arguing. I am arguing the concept of fairness rather than due process.

Finally, but very important in this situation, I believe that this is a bill which in certain parts worries business, as in the case of the amendment just reported by the Senate with respect to imminent danger, and, of course, the general standards which must be followed where there are no specific regulations with respect to health and safety, and so forth. Business feels this is rather tough on them.

Where can we give them a measure of reassurance, where can we give them by so simple a means as an autonomous enforcement board, and where it is completely consistent with the great body of legislation we have passed, I see no reason why we should not do it and I hope the Senate will.

Finally, one question was raised by the Senator from New Jersey about the qualifications of members of the commission. The amendment states as follows:

The Panel shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Panel under this act.

I respectfully submit that that is a good criterion rather than to pin it down to one from labor, one from management, and one from the public, because that would be unduly restrictive to a quasi-judicial body, but the mandate is put on the President, which the Senate can pass on, that these should be the kinds of people to make the judgments in cases of this character.

I deeply believe that the inspiration of confidence in the way in which this law will be administered, in view of other provisions like imminent danger, is so necessary that this is a very small price to pay for inspiring that kind of confidence, if nothing else, in the employers who will be subject to this law.

I feel strongly that the amendment should be agreed to by the Senate as a fair compromise between the views of management and the views of labor on this important bill.

Mr. President, I yield 5 minutes to the Senator from Colorado.

Mr. DOMINICK. I thank my distinguished colleague from New York. I believe he has set forth a very able argument for the record in behalf of his amendment, which I fully support.

It is interesting, in looking back on the history of the bill, to note that during the time we were considering the bill in executive session, the Senator from New York offered this same amendment, and it was defeated, once again, on a very close vote—almost by a straight party-line vote. I think that is too bad. I do not think we ought to be dealing with matters of health and safety on any partisan basis; and I hope we will not be so doing when the amendment comes to a vote a few minutes from now.

We are dealing with a very explosive issue here. We are dealing with the feeling of a great number of people throughout our country that the Federal Government has gone too far in the process of injecting itself into businesses and the regulation of human life; that we are all numbers, classified on a computer back here in Washington; that no one can really have initiative and an innovative approach any more, because all of us are regulated here in Washington. And here, in the name of occupational health and safety, we are once again concentrating power in one department, or one man—whichever way one wants to put it, because the Secretary of Labor is going to run the Department. We are putting enormous power over every industry and every business in the country in one person.

It seems to me the very least we can do in trying to make this bill palatable to the American people is to provide what is proposed in the amendment. No bill is worth a hoot unless it is palatable, because it cannot be enforced. We could not possibly find enough inspectors to impose upon this vast area of geography and the vast number of people in our country a bill which people will not voluntarily comply with in a great majority of the cases. And if the American public as a whole feels that the bill we are considering here is going to inject a

Federal agency into their business and into every industry in the country, we are really going to have bad problems with it. So a panel of enforcement seems to me to be the very least we can do—the very least—in order to try to avoid the star chamber procedure which we have had for far too long in too many agencies. We have had it in the Federal Trade Commission. We have had it in a number of other agencies.

Person after person after person who has looked into the problem of the reorganization of the agencies of our Government has said, "You should separate these functions." This is not a Republican or a Democratic idea. This is not a labor or business idea. This is the idea of any number of experts who have looked at the independent agencies and have said, "Separate the enforcement procedure from the rules procedure and from the inspection procedure." An article I read a couple of days ago proposed something along this line; that perhaps this is a new method by which we ought to approach it.

I do not think we have to have suggestions from other people; all we have to do is look at it. Let us take a businessman who runs a department store, and not consider the refineries and steel mills and other businesses that have Representatives in Congress urging protection for those businesses. Let us take a department store, because this law is equally applicable to department stores. Regulations are established after determination of what safety requirements are to be applied in Alaska. Are they going to be the same in Mississippi or in Virginia or Colorado? So regulations are established after a determination of what the problems will be in stores all over the country. Then the Department of Labor has to come along and make inspections and determine whether rules and regulations are going to be put into effect—the same department that makes the rules and regulations to begin with.

They say that in Alaska, or New Jersey, or Colorado, there is a violation of the rule. So they bring back a finding of a violation, as an inspector of the Labor Department, and submit it, and then the Labor Department decides whether there has been a violation or not; whether its own inspector is right. Perhaps there must be a hearing examiner. Many such hearing examiners would have to be employed in that type of situation.

The hearing examiner will decide it, subject to the review of the Secretary, and then someone can go to court if he decides to go to that trouble and expense. But it is one department, one group of people, one agency, doing the whole thing—setting the rules, doing the inspection, doing the administration, establishing the alleged violations, and then deciding whether there has been one.

I submit to the Senate that such a procedure is totally antagonistic to our sense of justice and fair play in this country.

The Senator from New York has not made any kind of massive or innovative change. All he says is, "Let us have someone else decide whether the rules, which have been established by the Labor Department, the administration of which is the Labor Department, the inspectors of which are in the Labor Department, have in fact been violated, but let us have a separate board do it." I think he makes an excellent case for such an approach.

MR. HOLLAND: Mr. President, will the Senator yield me 5 minutes?

Mr. DOMINICK. I yield 5 minutes to the Senator from Florida.

Mr. HOLLAND. Mr. President, I agree completely with the statements made by the distinguished Senator from New Jersey and the distinguished Senator from Colorado that the question of public confidence and acceptance is very deeply involved as we consider the passage of this act. I think an independent enforcement agency in my State, at least, where I have observed for a good long time what has been going on, will be much more acceptable to employers, and I believe in the long run to employees, than will the program presented by the committee bill, under which the same agency will control the whole process, subject only to the right of ultimate appeal to the Federal court, which means a long and expensive process, much longer than would be involved under this amendment.

I base my statement upon two observations which I made, first on the operation under the Wagner Labor Act. That was an agency which handled both the regulatory work and the inspection work, and, eventually, the question of whether performance was as it should be.

I know perfectly well, from my own experience as a lawyer over a good many years, that the impression prevailed that the labor unions and the labor union administrators and managers and leaders were much too close to the personnel of the board under the Wagner Act, and that fair and objective and impartial judgments were not to be expected from that agency.

I came here and participated in the repeal of that act and the setting up of what has proved to be a decidedly more acceptable setup than was true under the Wagner Labor Act.

Then, Mr. President, I recall that the former Secretary of Labor under the preceding administration, Mr. Wirtz, was given jurisdiction to make decisions in matters—and I do not question his conscientiousness—in which he had small experience and in which his judgment was very impractical and in which his judgment was more or less final, unless one wanted to go to the expense of long litigation. The opinion still prevailed in our State among our largest employers, those who operate concentrate plants, canning plants, processing plants of one kind or another in the field of processing agricultural products, whether meat, fruits, vegetables, or whatnot. There was the feeling that the decisions of the then Secretary of Labor—and I again say that I do not question his soundness of conscience—were not practicable, were not objective, and were much more nearly in accord with the demands and expectations of those who were directly representing the labor organizations.

I think that it will be much more acceptable, in my State at least, to have an independent agency such as is suggested in the pending amendment to handle the enforcements, and for that reason I strongly favor the amendment proposed by the Senator from New York, and hope it will be adopted.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield for a question?

Mr. HOLLAND. I am happy to yield.

Mr. WILLIAMS of New Jersey. The Senator from Florida has been a most distinguished and wise counselor in matters of agriculture. Not to make that exclusive; he has been a wise counselor for Senators in many areas.

The PRESIDING OFFICER. The time of the Senator from Florida has expired.

Mr. WILLIAMS of New Jersey. I yield such time as we may need for this colloquy.

I did refer to the operation of investigations and decisions in the quasi-judicial area of the Secretary of Agriculture, and I did refer to the Commodity Exchange Act, the Packers and Stockyards Act, the Perishable Agricultural Commodities Act, and also the Federal Seed Act.

The statutes governing all of these areas give the Secretary of Agriculture authority to investigate violations of the statutes and applicable regulations, and to issue cease and desist orders or suspend the right of a business to engage in a regulated activity because of violations.

My question to the Senator is this: I said that I know of no abuses under that analogous procedure that resides within the Department of Agriculture and in its Cabinet officer, the Secretary of Agriculture. I used that in analogy to what is provided in the bill now before the Senate. I wondered if the Senator from Florida would comment on any abuses that he has seen in that area.

Mr. HOLLAND. I am glad to comment. I have not seen great abuses in that area. I think that agricultural people generally have great confidence in the wise, objective, and practical actions of the Secretary of Agriculture.

In the field of labor the situation is quite different. There is always a certain combativeness between labor organizations and employing organizations. I have not seen that present in the field of agriculture; and as a matter of fact we tried to transfer, as the Senator will remember, the administrative functions of the Secretary of Labor to the Secretary of Agriculture in labor matters, and the Senate was evenly divided, in a 50-50 vote, on that matter, and the question had to be decided by the vote of the then Vice President, showing that a great many Senators felt as I do, that we can have very great confidence in an objective handling by the Secretary of Agriculture, but we have not had that same experience in the field of labor. There is too much continuous combat and continuous difference of opinion between those who employ and those who work for there to be satisfaction in advance, for employers to feel that a verdict, for employers to feel that a verdict and a judgment of the Secretary of Labor will be completely objective and completely practical.

The Senator recalls, does he not, that we tried to change the jurisdiction from the Secretary of Labor to the Secretary of Agriculture in the field of the control of agricultural labor, and that the Senate was evenly divided on that vote?

Mr. WILLIAMS of New Jersey. Yes.

Mr. HOLLAND. That, I think, is a clear showing of the fact that there is a difference of opinion, whether justified or not, as to the functions of the man and his top assistants who head the Department of Labor.

Perhaps I am being unfair, but I am stating the result of my own objective observations under the two agencies that I have mentioned, one of them not directly the Department of Labor, but it was associated closely in the minds of the employees, by reason of the actions taken under the Wagner Act, with the action of the labor leaders:

and, whether rightly or wrongly, it brought about an unsatisfactory condition, because the employers always anticipated that the judgment would be a slanted one, and very frequently it was.

The same thing was true in the other fields that I have mentioned, but we have not had that experience in connection with the Department of Agriculture. I am quite willing to state that I heard all of the able arguments of the Senator from New Jersey, and he was quite within his rights in citing many examples where this question does not exist. I think it does exist in this field of the clashes between labor and management, and it is for that reason that I strongly urge the setting up of an independent agency, quasi-judicial in nature, which shall not be regarded as too close to labor or too close to employers.

As far as I am concerned, though I shall not be in the Senate long, if I were here, and there were named by the President people who I thought would be slanted in their approach, I would not hesitate to vote against their confirmation. I think we need to have as nearly the judicial temperament and the assurance of judicial settlement of these particular arguments as we can guarantee in this legislation.

It is for that reason only, without criticism of the committee and certainly without criticism of the able Senator from New Jersey, that I feel that an independent enforcement agency will come nearer commanding the confidence of all concerned, and shortening the process of enforcement and meeting the problem, which is going to be a difficult one, of how to obtain enforcement that will satisfy the various elements, many times quite controversial in their approach to each other. That will be involved in this field.

Mr. WILLIAMS of New Jersey. Could I ask the Senator one further question? Would the Senator generalize to the point of advocating this approach offered in the amendment of the Senator from New York for all areas, or is he limiting it to this particular question before us?

Mr. HOLLAND. As far as my present attitude is concerned, it is limited to this particular question, and particularly because the continuing clash between employers and employees is so active, so controversial in nature, that I favor the setting up of an independent quasi-judicial body, which, in my opinion, ought to be just as dependable as the courts themselves, and so regarded by all concerned—just as objective, just as practical, just as impartial in their approach.

I do not think they would be so regarded if they were a segment of the Department of Labor. Without any criticism at all of my distinguished friend from New Jersey, for whom I have the highest regard, as I think he knows. I think the independent enforcement agency would much more nearly satisfy public opinion and the opinion of those who would have to be controlled by judgments to be entered by the enforcement agency here.

Mr. WILLIAMS of New Jersey. I just wondered whether the Senator would limit it to this area, because this is, to repeat one of the statements of the Senator from Colorado yesterday, an innovative approach. I used the word "radical." That suggests a sweeping change, and I wanted to find out whether the Senator from Florida would have this sweeping change sweep into all of the other areas where presently, within an agency or a department, we have the various steps of enforcement that we have contained in the present bill before us, which is sought to be amended by the Senator from New York.

Mr. HOLLAND. Certainly I am not suggesting a sweeping change applicable to every situation. I am simply saying that in this particular field, that is, in what this legislation deals with, I think the public will be better satisfied and that the enforcement will be more acceptable all the way around if it is by an independent, quasi-judicial body, well chosen. It has to be well chosen, to meet the approval of the Senate, in my judgment. I would certainly be insistent upon its being an impartial body, and I am sure the Senator from New Jersey would similarly insist. I think it will give a better result here. I do not think it is needed in many other cases, because there has been no showing of trouble. I take these things one at a time.

As the Senator knows, I had decided criticism to make of a former Secretary of Labor, and I think the distinguished Senator from New Jersey was not able to support his judgment in all matters because they were not practical and the Secretary showed an unfamiliarity with the problems which he was expected to solve. I could cite the examples, but that is an old story, and I do not think we need go into it.

The judgment prevails not only on the part of employers but also, I think, in the mind of the average citizen, that the Labor Department always—perhaps that is the right thing—is most sympathetic in its attitude toward the labor organizations. I think we need an impartial body, a body of high standing, to do this job, because it is going to be a tough one. That is my feeling.

I thank the Senator for his question.

Mr. WILLIAMS of New Jersey. I certainly appreciate this colloquy with the distinguished senior Senator from Florida. This may be the last opportunity I will have to engage in the discussion of a bill in the Senate with the Senator from Florida.

I can look back over a little more than a decade now with nothing but the greatest pleasure in joining with the Senator from Florida in debate and in discussions on the floor. Over that decade of opportunity, I recall that we have, in disagreement, worked toward the greatest harmony we could achieve and always, I felt, with mutual respect and friendship; and I have enjoyed it.

Mr. HOLLAND. I thank the Senator. I have enjoyed my association with the distinguished Senator from New Jersey. Many times we have agreed, sometimes we have disagreed; but I think we have come out of the arguments on those occasions just as good friends as we have always been, as we are now.

In my opinion, there is nothing but an objective approach to this matter, under which I think we have to recognize that here is a highly controversial field and here is a public feeling that the Department of Labor leans toward, is most sympathetic toward, the opinions of the labor organizations.

I think that when we are setting up a body to judge the controversies between the employers and the labor groups, we certainly should require the setting up of an agency that will be respected and is capable, impartial, and objective in its approach. It is for that reason only that I support strongly the amendment of the Senator from New York.

I thank the Senator from New Jersey for his uniform courtesy. We will always be friends. I hope that after I get home to Florida, which will be at the end of this year, he will honor me by coming down to see me from time to time. All I can tell him is that I will be glad to take him fishing or hunting or whatever he would like at that time.

Mr. WILLIAMS of New Jersey. I certainly appreciate that. Perhaps for spring training and out to a ball game.

Mr. HOLLAND. Yes.

Mr. WILLIAMS of New Jersey. We in the Senate know that one of the great former baseball players of the Nation is the Senator from Florida.

Mr. HOLLAND. The Senator is much too kind in that comment.

Mr. JAVITS. Mr. President, what is the situation with respect to time on the amendment?

The PRESIDING OFFICER. The Senator from New York has 14 minutes remaining, and the Senator from New Jersey has 26 minutes remaining.

Mr. JAVITS. Mr. President, I have no other speakers. I wish to yield myself 2 minutes, and then I shall be prepared to yield back the remainder of my time, if that is agreeable to the Senator from New Jersey.

I yield myself 2 minutes.

Mr. President, again, as Senator Holland has emphasized—and I am very grateful to him for his intervention in this matter—we are not arguing the issue of due process. We are arguing the issue of the acceptability of the proposed legislation and the feeling on the part of the people who will be subject to it that it is fair.

As to the points he has made, I should like to point out that in the National Labor Relations Board and in the Equal Employment Opportunities Commission, we have installed independent counsel, precisely for the reason that we are worried about it, notwithstanding that all the proceedings of those bodies are concerned with quasi-judicial functions, even those of investigation; whereas, in this case we are dealing with inspections which do not necessarily have to do with violations. The EEOC and the NLRB have to do with violation from the moment a complaint is made, so that everything is quasi-judicial, including investigation. That applies to the SEC as well. In this case, we are dealing with normal administrative functions of investigation in which a violation may or may not turn up.

Finally, in respect to administering the complex Coal Mine Safety Act, the Secretary, himself, was so impressed with the need for making a better public impression on enforcement that he established an in-house enforcement committee. He did not want to leave that authority in himself, although the law gave it to him.

For all those reasons, I hope very much that the Senate will accept what should have been accepted in committee as the compromise on the proposed legislation between the views of management and the views of labor and support this amendment.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. WILLIAMS of New Jersey. I will do so in one moment.

While I oppose the amendment, I will say that I have the greatest respect for the Senator from New York in his whole approach to the legislative process generally and on this bill in particular, in committee, and on the floor.

It is my feeling that this new agency is not needed for fairness and sound decision to prevail in this area of Government activity.

There is nothing to suggest to me that we need fear the authority that is granted to the Secretary of Labor under this bill. All the ele-

ments of due process certainly are written in; and if confidence is to be inspired, I think it is to be inspired by the soundness of the decisions, which, I believe, is insured to the extent it can be through legislation. I yield back the remainder of my time.

MR. JAVITS. I yield back the remainder of my time.

THE PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from New York. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

MR. KENNEDY. I announce that the Senator from Indiana (Mr. Bayh), the Senator from Nevada (Mr. Bible), the Senator from Connecticut (Mr. Dodd), the Senator from South Carolina (Mr. Hollings), the Senator from Minnesota (Mr. McCarthy), the Senator from Rhode Island (Mr. Pell), the Senator from Alabama (Mr. Sparkman), and the Senator from Maryland (Mr. Tydings) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. Ellender), is absent on official business.

I further announce that, if present and voting, the Senator from Indiana (Mr. Bayh) would vote "nay."

MR. GRIFFIN. I announce that the Senator from Hawaii (Mr. Fong) is necessarily absent.

The Senator from Kentucky (Mr. Cooper), the Senator from Florida (Mr. Gurney), the Senator from Illinois (Mr. Percy), and the Senator from Maine (Mrs. Smith) are absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The Senator from Kentucky (Mr. Cook), the Senator from Kansas (Mr. Dole), the Senator from Iowa (Mr. Miller), and the Senator from Texas (Mr. Tower) are detained on official business.

If present and voting, the Senators from Kentucky (Mr. Cook and Mr. Cooper), the Senator from Kansas (Mr. Dole), the Senator from Florida (Mr. Gurney), the Senator from Iowa (Mr. Miller), the Senator from South Dakota (Mr. Mundt), the Senator from Illinois (Mr. Percy), the Senator from Maine (Mrs. Smith), and the Senator from Texas (Mr. Tower) would each vote "yea."

The result was announced—yeas 43, nays 38, as follows:

[No. 383 Leg.]

YEAS—43

Aiken	Fannin	Pearson
Allen	Goldwater	Prouty
Allott	Goodell	Russell
Baker	Griffin	Saxbe
Bellmon	Hansen	Schweiker
Bennett	Hatfield	Scott
Boggs	Holland	Spong
Brooke	Hruska	Stennis
Byrd, Va.	Javits	Stevens
Case	Jordan, N.C.	Talmadge
Cotton	Jordan, Idaho	Thurmond
Curtis	Mathias	Williams, Del.
Dominick	McClellan	Young, N. Dak.
Eastland	Murphy	
Ervin	Packwood	

NAYS—38

Anderson
Burdick
Byrd, W. Va.
Cannon
Church
Cranston
Eagleton
Fulbright
Gore
Gravel
Harris
Hart
Hartke

Hughes
Inouye
Jackson
Kennedy
Long
Magnuson
Mansfield
McGee
McGovern
McIntyre
Metcalf
Mondale
Montoya

Moss
Muskie
Nelson
Pastore
Proxmire
Randolph
Ribicoff
Stevenson
Symington
Williams, N.J.
Yarborough
Young, Ohio

NOT VOTING—19

Bayh
Bible
Cook
Cooper
Dodd
Dole
Ellender

Fong
Gurney
Hollings
McCarthy
Miller
Mundt
Pell

Percy
Smith
Sparkman
Tower
Tydings

So Mr. Javits' amendment was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMINICK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

* * * * *

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

The Senate resumed the consideration of the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health; and for other purposes.

AMENDMENTS NOS. 1064 AND 1058

Mr. DOMINICK. Mr. President, I call up amendments Nos. 1054 and 1058 and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The legislative clerk proceeded to state the amendments.

Mr. DOMINICK. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendments will be printed in the Record.

The amendments read as follows:

AMENDMENT NO. 1054

On page 39, beginning with the word "The" on line 3, strike out all through the word "life." on line 9;

On page 30, line 10, strike the word "such";

On page 39, lines 12 and 13, strike the words "the highest degree of";

On page 39, line 13, strike the words "the employee", and in lieu thereof, insert "employees".

On page 39, line 6, after "that" insert a comma and "to the extent possible,".

On page 71, line 19, beginning with "The Secretary" strike out through line 25.

Mr. DOMINICK. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 5 minutes; and the Sergeant at Arms is instructed to keep the aisles clear of those who are not Senators.

Mr. DOMINICK. Mr. President, if my colleagues will bear with me, I am hopeful that the manager of the bill might be willing to accept these two amendments en bloc. If not, I hope that we will be through with the discussion of them rather early and get to a vote on the amendments even before the allotted time limitation.

Mr. President, section 18(a)(2), as presently drafted, requires that the Secretary of Health, Education, and Welfare, in developing criteria for use in standard setting, adopt criteria "which if applied will assure that no employee will suffer impaired health or functional capacities, or diminished life expectancy as a result of his work experience." My amendment would delete this confusing and unrealistic requirement.

The provision taken literally would require the Secretary to accomplish an impossible task. No job can be rendered perfectly safe, and no employee can be made perfectly secure from injury. Hence, it is impossible to fashion criteria which would assure these unattainable goals.

Apart from the normal hazards found in any occupation, there are also particular vocations which are inherently dangerous; and while the risks of these occupations may be minimized, some exposure to injury will remain the handmaiden of such employment.

It is difficult to imagine how the Secretary will deal with this provision administratively. Should he interpret this congressional mandate literally, it would appear necessary for him to forbid all employment, and it would certainly be necessary to proscribe inherently dangerous employment. Otherwise he must simply ignore the provision and exercise his discretion in fixing the criteria.

If, as I suppose to be the case, this provision is no more than a congressional instruction to the Secretary, directing him to adopt the most reasonable and effective criteria, then I submit that it is totally unnecessary. It must be assumed that the Secretary will prudently exercise his functions under the act, and he should be free to do so without the confusion which would be generated by this provision.

The same problem exists in connection with section 6(b)(5). My amendment would delete the requirement that the Secretary establish occupational health and safety standards which most adequately and feasibly assure that no employee will suffer any impairment of health or functional capacity, or diminished life expectancy.

It is unrealistic to attempt, as this section apparently does, to establish a utopia free from any hazards. Absolute safety is an impossibility and it will only create confusion in the administration of this act for the Congress to set clearly unattainable goals.

One of the great safety drives is to try to eliminate accidents in the home. Obviously, if we are going to set up standards which will assure that no accidents will happen in the home, we are going to run into an impossible situation.

Mr. MURPHY. Mr. President, will the Senator yield for a question?

Mr. DOMINICK. I am happy to yield to the Senator from California.

Mr. MURPHY. Is there a penalty suggested in the bill in the event the standards are not set up?

Mr. DOMINICK. There is no penalty suggested in the bill in the event standards are not set up, but if a standard is set up to meet the criteria here it would be impossible for anyone to live up to it. That is the problem.

Mr. MURPHY. It has been my experience that a very high percentage of industrial accidents are not caused by existing conditions but that they are caused by not obeying the existing rules and regulations, and suggestions. If I am incorrect, I hope the Senator will correct me. I understand that better than 50 percent of industrial accidents are caused by negligence on the part of the individuals concerned.

Mr. DOMINICK. Yes.

Mr. MURPHY. So the setting of a criteria has to be a two-edged sword and there must be punishment in the event conditions are not met and there must be a punishment in order to enforce compliance.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. DOMINICK. I yield myself 5 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 additional minutes.

Mr. DOMINICK. The Senator is correct. The difficulty of the language I am dealing with here and that I am trying to delete is the requirement, that the Secretary, in establishing standards, must assure that there will not be any risk at all.

I do not know of any housewife who does not run into some risk, and if nothing else, in reaching for a pan on a shelf and cutting her hand on the edge. That also happens in department stores and in other places.

There is no need to include a provision that this secretary or any secretary would be unable to administer.

Mr. MURPHY. I think the Senator has made an excellent point, and I thank him.

Mr. DOMINICK. Almost every occupation entails some risk of injury and there are many which are inherently hazardous, in which the danger is a permanent part of the job and an employee cannot escape regular exposure to the hazard for "the period of his working life."

Let us take the case of a bus driver. There is no possible way that a bus driver for the rest of his life could be assured that he is not going to get regular exposure to these hazards. By the very nature of driving a bus over the road, no matter how many safety tires and signals are on the bus, it is a hazardous occupation. A man working on a barge is faced with the same situation. The same is true of a stevedore on a dock. Almost any kind of occupation one can think of has something which is inherently hazardous simply by the fact that one is living and breathing and there is no way a criteria can be established so that an employee would not be faced with some risk for the period of his working life.

Any administrator responsible for enforcing the statute will be faced with an impossible choice. Either he must forbid employment in all occupations where there is any risk of injury, even if the technical state of the art could not remove the hazard, or he must ignore the

mandate of Congress and allow the work to continue even though some danger exists.

The confusion inherent in this provision will, in my opinion, render it no more than a hortatory admonition to the Secretary to fulfill his responsibilities under the act. This, of course, is implicit in the bill as a whole and is not an essential part of the statutory language.

My point is that in trying to make this bill more palatable there is no point in putting in criteria which cannot be met.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS of New Jersey. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. WILLIAMS of New Jersey. On my time.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that there be a quorum call with the time not charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS of New Jersey. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMINICK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CASE). Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. DOMINICK. Mr. President, I ask unanimous consent that the pending amendments and the modifications that are being prepared may be temporarily laid aside while we take up another amendment.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Colorado?

Mr. JAVES. Mr. President, would the Senator make that request to read "other amendments"? I have some technical and pro forma amendments which will be agreed to, as do other Senators. I request the Senator make his request in the plural.

Mr. DOMINICK. I am happy to make the request in the plural.

The PRESIDING OFFICER. The request is amended accordingly.

Is there objection? The Chair hears no objection, and it is so ordered.

The PRESIDING OFFICER subsequently said: The Chair understands that it is understood that the amendment of the Senator from Colorado (Mr. DOMINICK) will remain made until we return to it, and that that was part of the original request; and these other amendments may be acted on until such time as the Senator from Colorado reasserts his right. Without objection, that is the understanding.



OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

The Senate continued with the consideration of the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health; and for other purposes.

Mr. DOMINICK. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. DOMINICK. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment, ordered to be printed in the Record, is as follows:

On page 92, line 20, insert the following new Section:

SEC. 29. Section 601 of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new subsection, as follows:

EMERGENCY LOCATOR BEACONS

(d) (1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator beacons shall be installed—

(A) on any fixed-wing, powered aircraft for use in air commerce the manufacture of which is completed, on which is imported into the United States, after one year following the date of enactment of this subsection; and

(3) on any fixed-wing, powered aircraft used in air commerce after three years following such date.

(2) The provisions of this subsection shall not apply to jet-powered aircraft; aircraft used in air transportation (other than air taxis and charter aircraft); military aircraft; aircraft used solely for training purposes not involving flights more than twenty miles from its base; and aircraft used for the aerial application of chemicals.

Mr. DOMINICK. Mr. President, I shall be very brief. I am delighted the Senator from Nevada is in the Chamber. This is an amendment which would require installation of emergency locator beacons on fixed-wing aircraft made within a year from the date of enactment of the bill, that is, new aircraft, and the installation of emergency locator beacons on fixed-wing aircraft 3 years after this date which are still flying.

We consider this to be an important provision. It was taken to conference but it was not considered as a part of the bill. Since we are dealing here with health and safety measures and we have an enormous problem trying to locate downed aircraft, it seems to me this is an appropriate place for the amendment.

At the present time we have a record of spending over \$2 million in gas alone in the CAP looking for downed aircraft. We have spent over \$57 million in 4 years in connection with Air Force personnel looking for downed aircraft. We have an enormous loss of life involved, much human agony on the part of relatives, and the problems of estate concerned.

In the last year 28 aircraft went down in the New England area alone, aircraft which were lost for more than 24 hours. Fourteen of those aircraft in New England have not been found at all. Nobody knows where they are. As a result, estates have been tied up.

With the installation of relatively cheap emergency locator beacons, downed aircraft could be located in a matter of minutes. It seems to me this is the place to insert this amendment. I understand the manager of the bill has no objection.

Mr. President, before yielding the floor, I ask unanimous consent that an excerpt of colloquy relating to this situation, dated February 26, 1979, and a speech I made on the same subject in April of 1968, be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

AIRPORT AND AIRWAYS DEVELOPMENT ACT OF 1968

The Senate continued with the consideration of the bill (H. R. 14465) to provide for the expansion and improvement of the Nation's airport and airway system, for the imposition of airport and airway user charges, and for other purposes.

AMENDMENT NO. 521

Mr. DOMINICK. Mr. President, I call up amendment No. 521.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to state the amendment.

Mr. DOMINICK. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the Record.

The amendment ordered to be printed in the Record, reads as follows:

After line 3, page 143, add the following new section:

"That section 601 of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new subsection as follows:

"Downed Aircraft Rescue Transmitters

"(1) Minimum standards pursuant to this section shall include a requirement that downed aircraft rescue transmitters shall be installed—

"(1) on any aircraft for use in air commerce, the manufacture of which is completed, or which is imported into the United States, after six months following the date of enactment of this subsection;

"(2) on any aircraft used in air transportation after two years following such date; and

"(3) on any aircraft used in air commerce after five years following such date."

Mr. DOMINICK. Mr. President, the printed amendment is on every Senator's desk.

I yield myself 10 minutes to explain the amendment. It may take a little more time. I do not intend to take very long. I hope that the manager of the bill will accept the amendment. If he is not going to accept it and can so indicate now, we might as well get the yeas and nays.

Mr. CLEGG. Mr. President, I do not know whether I will accept the amendment. I want to hear what the Senator has to say.

Mr. DOMINICK. Mr. President, the language has been put into amendment form. It was an original bill introduced by the Senator from Washington. (Mr. MAHONEY) and me several years ago, and again in the beginning of this Congress. It has had two previous hearings. However, despite the fact that it has my last say here, I think that the evidence of the need for this is perfectly clear.

For many years we have had general aviation aircraft go down either for mechanical reasons or because of weather or pilot error or whatever other reason it might have been.

Immediately upon that happening, and when it is discovered that they have not arrived where they intended to go, search and rescue efforts are then started. They continue just to find out where they are. And they have continued these

efforts and have spent many flying hours in doing so. They have lost people in the process of air rescue efforts. It has happened all over the country.

The cost in terms of money to the taxpayers for the Air Force and the Civil Air Patrol and the cost in terms of how many lives of people who have not been found has been absolutely extraordinary.

I think in order to put the matter in perspective, I ought to give some figures.

Starting in 1961, when inadequate records were being kept, two airplanes were reported down. Both of them were in California, or one might have been in California or Oregon. Four persons were on board. They have never been found, neither the airplanes nor the people.

In 1962, when further effort was made along this line in the way of keeping records, 11 aircraft were reported down. They have never been found. There were 16 persons on board.

In 1963, five aircraft were reported down. There were 10 people missing.

In 1964, four airplanes and five people were involved.

In 1965, 13 airplanes and 22 people were involved.

In 1966, 13 airplanes and 20 people were involved.

In 1967, 12 airplanes and 23 people were involved.

The most information I have got for 1968 is that 18 aircraft and 38 people were involved.

We do not have the figures for 1969.

I think we can see the problem this creates not only in terms of rescue efforts involved in going in to try to find these airplanes, but also the cost in human misery. Every family of each person who has been reported down simply finds that it is in a position, legally speaking, where it has a missing relative of one form or another.

In many States, the estate is tied up for over 7 years because there is no presumption of death until the 7-year period has gone by. They cannot do anything about the estate or about the property situation.

In the meanwhile, they do not know where the missing persons are, whether they are injured or dead, or whether they have simply disappeared for reasons of their own.

From 1961 to 1968, there have been a total of 78 aircraft which have totally disappeared with 139 people on board, despite all the rescue efforts that have been made.

What expense is involved? What does this mean in terms of people? I do not have the figures here immediately. However, I have put them in the Record before. Reciting from memory only, from 1961 to 1965 the cost to the general taxpayer in terms of the cost of operating the Aerospace Rescue and Recovery Service was \$59 million.

These are just the search and rescue efforts that have been made that we know of. And in many cases the Civil Air Patrol has voluntarily carried the whole load and not even turned in the cost of their gasoline to the Federal Government.

I have some news items here which I think are pretty interesting.

Here is one of November 14, 1969. It is entitled, "It Was Terrible; Horror of 5 Crash-Stranded Days Told." The article was from Nevada City, Calif. It describes the people who were talking from hospital beds where this woman and her husband were 5 days in the aircraft waiting for someone to come and rescue them.

Here is another article entitled, "Colorado CAP Wing Halts Search for Light Plane." It tells of a missing light plane reported down between Denver and Grand Junction. It does not say how long this search went on.

I have another article entitled, "CAP's Search for Airplane is Continuing." This refers to the airplane being down between Denver and Grand Junction.

I have another article entitled, "Two Weeks in Plane Wreckage; Error in Search Saves Two." The people had been stranded for 2 weeks.

These are all 1969 clippings that I have kept. I have here an editorial from one of the papers entitled, "Protect Pilots From Themselves."

I have another clipping entitled, "Area Men Object of CAP Hunt."

Mr. President, I ask unanimous consent that the articles and editorial to which I have referred be printed at this point in the Record.

(There being no objection, the material was ordered to be printed in the Record, as follows:)

[From the Washington Daily News, Nov. 14, 1969]

HORROR OF 5 CRASH-STRANDED DAYS TOLD

NIAGARA CITY, CALIF., November 14.—"Marvin was very strong, he handled the controls and pulled us out, but we went down again . . . lower and lower. I prayed to God to save us."

Anita Miler, 23, spoke softly from a hospital bed. A few feet away her husband Marvin, 25, mumbled thru the wires binding his broken jaw. "It wasn't the plane's fault."

The Vancouver, Wash., couple, en route from Reno, Nev., to Disneyland near Anaheim, Calif., crashed last Friday on a mountainside and survived five days on melted snow and dried soup.

They were rescued after Mr. Miler struggled eight miles through foot-deep snow with a broken ankle, jaw and wrist to a mountain resort.

"We crashed and I looked up and here I was and I was all right, and I turned to Marvin and I said, 'Honey let's get out of here,'" she said.

But her husband was unconscious.

"I looked around and there a few feet away was a cabin. It took me a long time to get out of the plane. I was all pinned in," Mrs. Miler said.

"I came back for Marvin. He was out, he couldn't hear what I said. I helped him into the cabin.

"He scared me so because the blood was just running out of his ear. It was terrible. He just kept saying, 'What happened?'"

BUILT FIRE

"I helped him into the cabin. When we got in, there was a stove. I pulled paper from the wall. I had some matches. I pulled out the cupboard and shelves and burned every piece of wood I could."

Mr. Miler was delirious for a day, while his wife melted snow in a soft drink can and prepared dried soup. On the second day, he recovered.

For three days the couple stayed close to the cabin. They burned an abandoned building at one point to attract rescuers but nobody noticed, despite the fact one plane came so close to the crash site "we could have hit it with a rock."

On Wednesday, Mr. Miler set out to seek help and was found wandering along the roadside about two miles from Sierra City, a mountain village.

A sheriff's rescue vehicle then went in to bring out Mrs. Miler.

COLORADO CAP WING HALTS SEARCH FOR LIGHT PLANE

The Colorado Wing of the Civil Air Patrol (CAP) Sunday night called off its search for a missing light plane piloted by a Grand Junction, Colo., man because of a lack of leads.

The plane, a Cessna 150 flown by Glenn Scott, 69, vanished Oct. 31 on a flight from Denver to Grand Junction. Capt. Harlan Cook, CAP information officer, said Scott had 100 hours of flying experience.

Cook said the search will be reopened if new leads are found.

During the first weekend of the hunt, planes went up in the ground by land weather. But fair weather made the search a full-scale effort every day last week, with as many as 15 planes and 25 ground parties participating each day.

The planes systematically covered a wide area along the entire probable flight path of the missing plane. Cook said the CAP's effort was hampered by new snow, which totaled 19 inches in much of the search area.

CAP'S SEARCH FOR AIRPLANE IS CONTINUING

The Colorado Civil Air Patrol continued Saturday and Sunday for a small aircraft believed down between Denver and Grand Junction.

The green Cessna 150, piloted by Glenn Scott of Grand Junction and bearing the number 5000, left Denver for Grand Junction at 10:35 a.m. Friday. The aircraft carried 84 1/2 hours of fuel for the 110-mile flight, the CAP said.

The air search, headed by command coordinator Maj. Glen White, will resume when weather permits. Meanwhile, ground parties are continuing their search in the winter back area.

TWO WEEKS IN PLANE WRECKAGE; ERROR IN SEARCH SAVES TWO

JACKSON, CALIF.—Two men who spent two weeks in the wreckage of a light plane with the body of the pilot are safe today because of an erroneous smoke report and the determination of friends.

Neither Eugene Ebell, 33, nor Robert Staar, 17, suffered major injury from the Jan. 11 crash or their 15 days without food. Pilot Donald Shaver was killed in the crash in the Sierra Nevada mountains.

Ebell had chartered the plane in Fresno, the hometown of all three men, to fly to Elko, Nev., to pick up the body of an uncle who was to be buried in Fresno, Staar, a friend of the pilot, went along for the ride.

Ebell said the pilot tried to turn back over the Sierra Nevada because the plane's wings were icing but, in turning, the plane lost too much altitude and crashed.

Ebell and Staar were rescued by helicopter yesterday from a rugged canyon 35 miles east of Jackson after Staar was spotted from the air.

They said they had heard and seen search planes regularly, but none came far enough up the mountains to see them. The crash site was near the 7,000-foot level of the Sierra about 180 miles east of San Francisco.

Staar set out Sunday to get help.

At the same time, searchers shifted their aerial hunt to the east because of an apparently erroneous report of smoke. On their way to the area yesterday, Doyle Hawkins and helicopter pilot George Wurzburg spotted Staar beside a log where he had slept overnight after walking 3½ miles.

As many as 20 planes a day had searched the Sierra for the wreckage the first week, then gave up. Friends and relatives of the missing men collected \$1,400 and hired the helicopter last Friday to continue the aerial hunt.

Doctors at Amador Hospital said the survivors were treated for exposure and minor frostbite. Ebell also had some crushed ribs.

PROTECT PILOTS FROM THEMSELVES

The white vastness of Corona Pass stretched onward for miles beneath search planes Sunday that poured over its bleakness in search of a small private plane that ended its last flight Friday with a deathly plunge into a mountainside.

Finally, after hours of looking, a plane spotted a clump of darkness in the snow.

A few hours later ground crews pulled the bodies of a California couple from the wreckage.

The plane apparently crashed shortly after takeoff from Stapleton Field in Denver at 10:16 a.m. Friday.

Yet searchers were faced with the tremendous task of combing hundreds of square miles encompassing the flight pattern filed by the plane's pilot.

This time, there were no survivors. But there have been other times when there were. And there will be others.

Current legislation proposed by U.S. Sen. Peter Dominick and State Rep. Ted Bryant can eliminate the ever present danger of persons surviving a crash only to die of exposure or lack of medical aid.

Mandatory installations of crash locator beacons, small battery powered pieces of equipment that shoot out a life saving beam, would end the hours, days and months of waiting for help that have cost many their lives.

The pilot of the plane that crashed Friday had at least filed a flight pattern that led searchers to the crash site in a relatively short time. Others have never been found.

But, had a functioning crash locator beacon been aboard, the crash could have been found in a matter of short hours. And any survivors could have been rescued.

Despite the apparent need for required rescue equipment, there looms a bigger, more complex issue that could be combined with material equipment not only to save lives after crashes, but to prevent crashes.

Colorado's mountains have for years claimed the lives of pilots who have had too little or no experience, in traversing them.

The intricacies of mountain flying, particularly in single engine planes, is too apparent to the state residents who read almost weekly of another pilot who "thought he could make it."

One does not receive a second chance when attempting to climb over 12,000 foot peaks while being pulled from below by unpredictable down drafts.

So the essence of air safety points in more than one direction. It is time meaningful legislation began to probe effectively all the possibilities.

And a pertinent direction should be that of specialized training for persons who attempt to navigate the Rocky Mountains from the air. Without this special training, death from the skies will continue.

AREA MEN OBJECT OF CAP HUNT

Members of the Colorado Wing of the Civil Air Patrol (CAP) Friday joined a three-state search for a missing plane carrying three Denver-area men on a flight from Denver to El Paso, Tex.

The men, all Martin Co. engineers, were identified as Ted R. Jones, 35, of 6394 S. Marion St., Arapahoe County, the pilot; Eugene W. Barker, 38, of 7005 Juniper St., Bow Mar, and William DeVos, 43, of 3453 W. Bowies Ave., Littleton.

Capt. Harlan Cook, Colorado CAP information officer, said they took off from Stapleton International Airport at 11:15 p.m. Wednesday and were to arrive in El Paso at 2:15 a.m. Thursday.

He said no report of the plane, a two-engine Cessna 310, had been received since takeoff. Cook said it was reported that they were going on a fishing trip in the vicinity of Navarro, N.M.

Cook said 12 CAP aircraft and three ground parties began the Colorado phase of the hunt early Friday on a full-scale basis. Colorado units did their first searching Thursday afternoon, along with CAP personnel in New Mexico and Texas.

Cook said the Colorado searchers Friday were concentrating on the probable flight course between Stapleton and Pueblo, Colo. The missing plane was to have passed over or near Pueblo, and Las Vegas and Corona, N.M.

Federal Aviation Administration officials in Denver said severe icing conditions existed on the missing plane's flight course at the time it was in the air.

Mr. DOMINICK. What am I trying to do by this amendment? I am trying to say that original general aviation aircraft when they are manufactured must have on them a homing beacon. When they go down, it automatically emits a signal. And anyone tuned in on this signal, which is either 121.5 or 243.0, can home in on the transmitter and find it within a matter of minutes. To give an example of whether or not it works, we had a test outside of Aspen, Colo., at a time when I happened to be flying my own airplane. I was notified a test was going to be made. I did not have a homing beacon of that frequency I could use. I had a general idea where I was going to be, somewhere near this Aspen, Colo., mountainous terrain. I tuned in and by simply using the volume control on my receiver, using this signal, within 15 minutes I was within a quarter of a mile from where it was and I did not have a homing beacon. The method simply is that when the search plane goes away from it, it disappears and when the search plane comes toward it, it increases in volume and so you can locate where the particular instrument is.

The objections we have had to this particular proposal largely have been from those people who say this type requirement should not be mandatory, that it should be voluntary. The difficulty with that is that all pilots, including myself, are basically optimistic. One has to be optimistic if he is in politics, if he is a flier, or if he is in the mining game; otherwise no one would go into them. One has to figure he is going to win. This is especially true in being a pilot. So they have not put in this equipment.

There have been proposals by the FAA that they be required over areas such as the desert or large bodies of water. If that method is going to be followed the difficulty is there would have to be an army of inspectors to enforce it. In addition, there would be great difficulty in trying to find out where they could be picked up and returned again, whether it is going to be possible to obtain the rental instruments. In other words, whether they are in proper working conditions when they are rented.

The estimated cost at the present time of installing these instruments as new equipment in aircraft is between \$750 and \$200 per airplane. If someone is buying a new airplane, and they are sold every day, the cost of \$200 to \$250 could be relatively easily absorbed, in my judgment, by the manufacturer so it would not

be very much of a cost increase; and if it is not absorbed, in terms of lifesaving devices it is not going to be the difference in whether a pilot buys the airplane or not. All one would have to do is go down once and have this signal work and he will know how important this signal is to anyone in the airplane or to the families they have left at home.

Mr. President, I have just a couple of other points that I wish to make and then I shall reserve the remainder of my time.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOMINICK. Mr. President, I yield myself 4 additional minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 4 additional minutes.

Mr. MAGNUSON. Mr. President, will the Senator yield at that point?

Mr. DOMINICK. I am happy to yield to the Senator from Washington.

Mr. MAGNUSON. Mr. President, as the Senator knows, I have been interested in this matter. The amount the Senator mentioned is the present going price. However, we had some testimony to the effect that if this was going to be more widely used then they would be able to bring the cost down and as they have more orders of this type, the manufacturers, whoever they may be, would be able to produce these much, much cheaper.

Mr. DOMINICK. That is correct.

Mr. MAGNUSON. They would be installed as standard equipment.

Mr. DOMINICK. Yes. As a matter, I have had information from some people who have been in to see me on this matter because I have been very active on it, and they hope to get it down to \$50.

Mr. MAGNUSON. The testimony we had was to the same effect.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. DOMINICK. I yield.

Mr. GOLDWATER. Mr. President, to sharpen up the focus on this point, I recall that when transponders first became available for private aircraft, the price was \$3,500. Now that they are becoming mandatory and can be more or less mass produced, they are being offered for under \$1,000.

Knowing something about the electronics involved in a locator beacon such as this, I feel certain that when they are required to be placed on aircraft, they could be procured for between \$50 and \$100.

Mr. President, I commend the Senator for introducing this amendment. I know there is opposition to it, but living in the Rocky Mountain region and having participated in many searches for aircraft and having lost good friends in lost aircraft, I think it is an important measure.

I might ask the Senator if it is true that considering just the great many hours that the Civil Air Patrol has spent on searches and if we assume the ridiculously low price—I would say almost impossible price—of \$10 an hour, we are talking about something close to \$2 million in just the cost of gas that has been spent on these searches. Am I correct?

Mr. DOMINICK. The Senator is correct. That does not cover the cost of the Air Force when they go out and also participate in search efforts.

Mr. GOLDWATER. They do. We have a group at the Air Force base near Phoenix that goes out on all searches. The Civil Air Patrol is not the only group that goes out. We have sheriffs' air posses that participate. I do not think there is an aircraft owner in Arizona that does not have his aircraft available immediately for searches.

Probably in the Senator's State and in Wyoming, Alaska, Nevada, and the Rocky Mountains States, we lost more airplanes every week than are lost in the rest of the country in a year. This comes close to home to all of us.

Mr. DOMINICK. I appreciate the Senator's comments.

Mr. President, I might say it is very interesting. We have the number of hours for Aerospace Rescue and Recovery Service in 1968. The table is broken down among Eastern, Central, Western, and Alaskan areas. In the Eastern area there were 28 aircraft missing more than 24 hours before they were found. The Eastern area includes the States of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Maryland, West Virginia, Ohio, Kentucky, Virginia, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi.

There were only 25 aircraft missing more than 24 hours in the Central Region. In the Western Region there were 33 aircraft missing more than 24 hours. The Western Region includes the States of New Mexico, Arizona, Utah, Nevada, California, Oregon, Idaho and Washington.

The PRESIDING OFFICER: The time of the Senator has expired.

Mr. DOMINICK. I yield myself 5 additional minutes.

Colorado is included in the central area. In 1969 we had quite a number of planes that went down there. We plotted a map and put it up before the Radio Technical Commission for Aeronautics meeting about 2 years ago when I made a talk before them in Washington. The map showed airplanes down more than 3 days. There were more of them in the area of South Carolina, Florida, and Georgia than anywhere else in the country, which I could not believe. I thought there would be more in our area or in the area of Oregon and Washington. However, I assume that is because of the lakes and marshes in the Southeast.

There may have been some of these planes that decided to take off and not tell anybody. That is always a possibility. If they had these locator beacons, we could find them.

Mr. President, I ask unanimous consent to have printed at this point in my remarks the table showing the Aerospace Rescue and Recovery Service statistics to which I have referred.

AEROSPACE RESCUE AND RECOVERY SERVICE, 1968

Eastern A.R.R.C.: (includes states of Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Maryland, West Virginia, Ohio, Kentucky, Virginia, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi.)

Aircraft missing more than 24 hours.....	28
Of which were missing more than 3 days.....	20
Of that total how many never been found?.....	5

Total search hours:

U.S. Air Force.....	54
CAP.....	6,830
Total	6,884

Central A.R.R.C.: (includes states of Michigan, Indiana, Illinois, Wisconsin, Minnesota, North Dakota, South Dakota, Montana, Iowa, Nebraska, Wyoming, Colorado, Kansas, Missouri, Arkansas, Oklahoma, Louisiana and Texas.)

Aircraft missing more than 24 hours.....	25
How many were missing more than 3 days?.....	15
How many never found?.....	4

Total search hours:

U.S. Air Force.....	891
CAP.....	8,102
Total	9,000

Western A.R.R.C.: (includes states of New Mexico, Arizona, Utah, Nevada, California, Oregon, Idaho and Washington.)

Aircraft missing more than 24 hours.....	33
How many were missing more than 3 days?.....	18
How many never found?.....	6

Total search hours:

U.S. Air Force.....	1,071
CAP.....	7,368
Total	8,439

Alaska:

Aircraft missing more than 24 hours.....	40
How many were missing more than 3 days?.....	6
How many never found?.....	3

Total search hours:

U.S. Air Force.....	806
CAP	2,316

Total	3,122
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RECAP

Search hours flown by Air Force.....	2,822
Search hours flown by Civil Air Patrol.....	24,623

Total search hours.....	27,445
Crashed aircraft located.....	260
Downed aircraft never found.....	18

Mr. ALLOTT. Mr. President, will the Senator yield?

Mr. DOMINICK. I yield.

Mr. ALLOTT. Mr. President, I thank my distinguished colleague for yielding, because I have followed his interest in this amendment for a long time, and I wholeheartedly support it. I think the editorial to the effect that pilots must be protected from themselves brings up the main issue that is involved.

I would like to ask the Senator one question with respect to the cost of this proposal. The Senator from Arizona has mentioned the rescue efforts of the Air Force and the National Guard. We have spoken of the CAP. In addition to these efforts, I recall from my experience with flying that almost every private airplane that was on any small airport anywhere near a downed aircraft would join in the search for the airplane.

Mr. DOMINICK. The Senator is totally correct.

Mr. ALLOTT. So there is really no way of adding up the total amount that is spent for the search and rescue efforts. We have special problems in the Rocky Mountain region with those who have not had any experience with the unique flying conditions which exist there. Some experienced flyers have gone down in these mountains, because they were unfamiliar with the updrafts and down-drafts peculiar to Rocky Mountain flying.

When there is such a locator facility available within the cost parameters talked about here, it seems outrageous to spend all this money in search-and-rescue operations, when the lost plane could have been found if a marker beacon had been used on the plane.

Mr. DOMINICK. I certainly want to thank my colleague for bringing these points up, because they dramatize the problems we have. We have not even talked about the ground searches that go on in a great many areas. Someone says he heard a low-flying airplane in bad weather, and the airplane does not show up. As a result, there are ground searches made.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOMINICK. I yield myself 5 additional minutes.

In order to be totally fair, one of the problems we have had to date with this particular system is the question of who will be listening. It is all right to put up a signal, but the question is, who is going to be listening? The interesting thing is that the FAA is in the process of completely equipping its own aircraft so they can home in.

The other procedure that can be followed is to include it as a part of the NASA satellite concept. This has not been done yet because of the budget problems we have, but with a satellite overhead which could pick these programs up, within an hour the signals of the aircraft that was down could be pin-pointed. It is really a quite extraordinary development.

I hold in my hand an article written by Dan Partner, a very able reporter for the Denver Post, written on October 19, 1969, in which he mentioned the possibility of using the satellite system for air traffic control. It can also be used for the air rescue effort.

I ask unanimous consent to have the article printed in the Record.
 (There being no objection, the article was ordered to be printed in the Record, as follows:)

TRAFFIC CONTROL SATELLITES URGED

(By Dan Partner)

A satellite system for use in air traffic control is emerging as a practical application of space technology that has produced the communications and weather satellite programs.

Given a high priority, a system of satellites could be orbiting the earth by 1976 that could pinpoint the positions of thousands of aircraft expected to be clogging the domestic and international airways. The system would be similar, but considerably more advanced, than the four satellite system now in use for surface ships.

TRW Inc. engineers are working on a plan that would permit Federal Aviation Administration air traffic control centers to determine positions of aircraft to an accuracy of 50 feet through data flashed from space at one-second intervals. Technology for the system is available, says David D. Otten, advanced systems manager for control and navigation satellites for TRW's Systems Group.

A small antenna and transmitter for use aboard aircraft would cost \$400 and weigh three pounds. In addition, the satellite system would provide precise radio navigation to planes at a cost of about \$5,000 each, Otten estimates.

The system would require six satellites to cover the United States and from 12 to 15 to service worldwide air traffic routes. Otten estimates the cost at from \$54 million and \$66 million, including development, hardware, launch and operational expenditures. Each satellite would have a lifetime of about five years.

Meanwhile, the FAA and the Department of Transportation are beating the drums for passage of the aviation facilities expansion act, now before Congress. In an article, "Logjams in the Sky," in the September issue of FAA Aviation News, Transportation Secretary John Volpe wrote:

Passengers carried in 1968 by U.S. airline amounted to 75 per cent of the nation's population. At the rate passenger traffic is increasing, the number of passengers carried will surpass the population within a short time.

In the general aviation category, private fleets are doubling every decade. This segment of aviation will represent 10 per cent of the gross national product by 1980.

Air freight hauled by commercial airlines jumped an unprecedented 24 per cent last year over the previous 12 months.

The proposed legislation, Volpe contends, maintains that if present growth in aviation is to continue, then both commercial and general aviation interests must share in the development costs to improve and update U.S. airport and airways facilities.

Says FAA Administrator John Shaffer: "The expansion of our air traffic control system has fallen far short of matching the growth in air traffic. More than two-thirds of the nation's 5,200 airports are in need of landing area improvements, and 500 more airports are going to be needed before 1980."

The Transportation's airport-airways program has a user tax base, which would set up a designated account to protect the funds for use on the airways and airways. The bill establishes a federal commitment to a 10-year \$2.5 billion grant-in-aid program. It authorizes \$1.25 billion over the next five years, starting with 380 million in fiscal year 1973 and \$270 million in 1977.

Mr. Transportation, in addition, he I pointed out before it is known that a man is going from one point to another, either by his family or through a flight plan, and we get a report that the plane is down, it is not only possible, but it is inevitable, happen that any private aircraft going through that area will need monitoring those aircraft. By the system control one can, generally speaking, pick it up and determine where it is.

Second, it is totally feasible, and I think it is highly possible, to get the commercial guidelines which are concerning the control to install a little resolution. One is not required to the full, I am just pointing out what can be done with a modest light on the instrument. When a signal is picked up it will trigger. At that point, the pilot is expected to be the nearest FAA flight service station. They are not, and that's the air rescue effort. I have talked with some of the officials with respect to this matter. They do not want to go ahead with it until other concepts can be explored, because of the cost involved. I do not blame them for it. But if we go ahead, we will be that far ahead of the game.

Mr. CANNON. Mr. President, will the Senator yield?

Mr. DOMINICK. I yield.

Mr. CANNON. I wanted to raise a few points in colloquy with the Senator.

I am sure the Senator is aware of the fact that the FAA proposed that very thing, under its rulemaking authority, in 1968, and it heard such an uproar from the users and pilots that they did not do anything further with it. So, in effect, that has been abandoned.

It seems to me there are two or three weaknesses in that proposal, and I would like to have the Senator respond to those, if he would not mind.

Mr. DOMINICK. May I respond to the first one first?

Mr. CANNON. Yes.

Mr. DOMINICK. They proposed at that time to preposition some of these locator beacons at base operations throughout the country, where they could be picked up on a rental basis and put in the aircraft and could be used when going over a deserted area, or desert land, or a body of water. That system is not going to work. Many of the objections did not go to putting that device in; they went to the question that the system would not work and the money would be put up for nothing. I myself objected to it.

Mr. CANNON. Two points disturb me. One of them is that there are a number of small airplanes, two-seater airplanes, around the country that people plan on using no more than 50 miles away from their home. They like to fly for a little pleasure and sport. To that type of airplane you would add something that will add substantially to the cost of the airplane, without reducing any appreciable risk.

Mr. DOMINICK. May I answer that question first?

Mr. CANNON. Yes.

Mr. DOMINICK. I am not sure of the exact percentage, but I think it is right. Approximately 60 percent of the accidents that happen in general aviation occur within 20 miles of the airport. In my part of the country, and I am sure in the Senator's part of the country, I know we have cases in which a person has gone off the airport, has disappeared in a cloud, has crashed, and has not been found for a week. So it is just as important in training planes as in planes which can be used for cross-country flying, so they can be found if they go down.

Mr. CANNON. To go to the figure used by the Senator, I would go further and say that 60 percent of mishaps happen within 1 mile of the airport. A good many of them happen right at the airport. What the Senator is trying to do is to have some kind of device that would help in locating a lost airplane.

Mr. DOMINICK. That is correct.

Mr. CANNON. The Senator does not make any distinction with respect to the larger jets. Take the commercial jets. I would say that the system for tracking them and knowing where they are at any given time is much more accurate than any locator beacon system such as would be installed in the small airplanes as you suggest. It seems to me it would be a waste of corporate money of the commercial airline industry to have to put this kind of equipment in the commercial jet airplanes.

Mr. DOMINICK. Let me say that I am not anchored in on phase 3. It gives them 5 years to put it in. I am perfectly willing to take that provision out. The only reason it was put in there originally is that many aircraft used in air commerce were not jets. Particularly was this true 2 years ago, when we started developing this device.

If the Senator will feel happier about it, I am perfectly willing to modify the amendment to take out paragraph 3.

As to the propeller airplane problem, the commercial airliner going out over water, extensive water hazards, and things of that kind, I can see how perhaps we need something to deal with those matters, but since almost all of them are flying almost totally under instrument flight conditions, where they are monitored all the way, I think this may be asking a little more than we should, and I am perfectly willing to modify the amendment to that extent.

Mr. President. I ask unanimous consent to eliminate from my amendment subparagraph (3) on page 2.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

Mr. DOMINICK. I so modify my amendment, and I strike the semicolon and the word "and" in line 5, and insert a period after the word "date".

The PRESIDING OFFICER. The amendment will be modified as the Senator has specified.

Mr. DOMINICK. I think the suggestion of the Senator from Nevada is reasonable, and I am happy to accept it, and have so modified my amendment.

Mr. President, I ask unanimous consent to have printed in the Record a table that I have showing aircraft which have been missing from 1961 through 1967, together with the number of people on board and the States from which they were declared missing.

There being no objection, the table was ordered to be printed in the Record, as follows:)

MISSING AIRCRAFT

Area	Date	Persons on board	Area	Date	Persons on board
California, Oregon	Dec. 1, 1961	2	Kentucky, North Carolina	Sept. 7, 1965	1
California	Mar. 14, 1967	2	Alaska	Sept. 13, 1965	1
Total		4	West Massachusetts	Sept. 14, 1965	2
Louisiana, Texas	Jan. 4, 1962	3	South Florida	Nov. 1, 1965	2
South Carolina	Mar. 1, 1962	1	Do.	Dec. 7, 1965	1
Oregon	Mar. 17, 1962	1	California	Dec. 10, 1965	2
Alaska	June 7, 1962	1	Total		22
Michigan	June 28, 1962	1	Maine, Vermont, New Hampshire	Mar. 20, 1966	1
North Carolina	July 17, 1962	4	Mass.	Apr. 7, 1966	2
Michigan	Aug. 18, 1962	1	South Carolina	do.	1
Do.	Sept. 1, 1962	1	New York, Massachusetts	Apr. 27, 1966	2
Alaska	Oct. 16, 1962	1	South Carolina	May 16, 1966	1
Do.	Oct. 18, 1962	1	Alaska	June 11, 1966	1
Washington	Nov. 10, 1962	1	North Carolina	June 28, 1966	2
Total		16	Do.	July 12, 1966	1
Utah, Colorado	Jan. 9, 1963	4	Florida, Mississippi, Louisiana	Sept. 20, 1966	2
Utah, Nevada, California	Mar. 28, 1963	2	Alaska	Sept. 23, 1966	1
Oregon	July 3, 1963	1	Do.	Oct. 8, 1966	1
Washington	Aug. 28, 1963	1	Alabama, Georgia	Nov. 8, 1966	1
Michigan, New York	Nov. 3, 1963	2	Ohio	Dec. 20, 1966	4
Total		10	Total		20
Washington	Jan. 27, 1964	1	Florida	Jan. 15, 1967	4
North Carolina	Feb. 15, 1964	1	Michigan	do.	3
South Carolina	May 3, 1964	1	North Carolina	Apr. 24, 1967	2
Oregon, Washington	June 15, 1964	2	South Texas, Mexico	Apr. 27, 1967	2
Total		5	Utah, Nevada, California	June 1, 1967	3
Florida, Alabama	Jan. 3, 1965	4	Alaska	June 24, 1967	1
Washington	Jan. 29, 1965	1	Florida	June 28, 1967	1
Do.	May 17, 1965	4	Massachusetts	June 28, 1967	1
Alaska	June 6, 1965	1	Florida	Aug. 26, 1967	1
South Carolina	July 1, 1965	1	South Florida	Oct. 8, 1967	1
Alaska	July 12, 1965	1	Alaska, Texas	Oct. 11, 1967	2
South Carolina	Sept. 5, 1965	1	Arkansas, Kentucky, Tennessee, Georgia	Oct. 14, 1967	1
			Total		28

Mr. DOMINICK. Mr. President, I further modify my amendment, and send the modified amendment to the desk. I shall read it now, so that we can be sure Senators know what it is:

After line 3, page 143, add the following new section: That section 401 of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new subsection as follows:

"Downed Aircraft Rescue Transmitters"

"(d) Minimum standards pursuant to this section shall include a requirement that downed aircraft rescue transmitters shall be installed:

"(1) on any aircraft for use in all countries, except jet aircraft used in international transport, the manufacture of which is completed on which is imported into the United States, after six months following the date of enactment of this subsection;"

I think if the Senator from Nevada does not mind, we will change that to "one year" instead of "six months".

Mr. CANNON. Very well.

The PARSONS OFFICE. The amendment will be modified as specified.

Mr. DOMINICK. So it would read:

After one year following the date of enactment of this subsection ; and then continuing :

(2) on any aircraft used in air transportation after three years following such date

Subsection (3) would be stricken.

As such, it is my understanding that the Senator from Nevada will accept the amendment.

Mr. CANNON. Mr. President, I am willing to accept the amendment as now modified by the distinguished Senator from Colorado.

I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Colorado yield back the remainder of his time?

Mr. DOMINICK. I yield back the remainder of my time.

The PRESIDING OFFICER. The remaining time having been yielded back, the question is on agreeing to the amendment (No. 521) of the Senator from Colorado (Mr. Dominick), as modified.

The amendment, as modified, was agreed to.

"SEEK-YOU—SEEK-YOU!"

(Address by Peter H. Dominick, U.S. Senator)

"May, 1967. Dear Editor: You can remove my husbands name from your sample copy mailing list. He was killed in 1965. The crash occurred only about 33 miles from our home airport on a heavily timbered mesa. Searchers estimated they flew over the spot at least 20 times but could not see a sign of the plane because of the way it had dived into the timber."

This was a letter to the Editor of "Aero West" Magazine from one of my constituents in Gunnison, Colorado.

"C.Q." ("Seek-You")—has been the familiar call of "Ham" radio operators the world over seeking contact with whomever might be listening. In the phonetic sense, it very well fits the theme of this conference. For we are seeking to make it easier to find an aircraft and its occupants who may have encountered an emergency situation and have been forced to attempt an emergency landing away from any airport, and very likely in "an unfriendly environment." If the emergency occurs in rough terrain, the likelihood of injury to the occupants is high, and the dangers are compounded if adverse weather conditions prevail in the area where the emergency occurred. Adverse weather not only endangers the survival of injured and uninjured passengers alike, but can and often does increase the hazards to the dedicated people who risk their own lives while trying to help those in distress.

Our success in finding downed aircraft has been fairly good, but in a number of instances we have failed tragically in locating the aircraft until weeks or months after the accident—too late to help those who survived the accident but later perished from long exposure in the hostile environment. Most recently, the nation was shocked to read in the newspapers of the diary kept by 16-year old Carla Oien, documenting the two-month long struggle of the three members of this family to survive after their light plane went down in the mountains of California on March 11th last year. A deer hunter finally happened upon the scene of the tragedy on October 2nd—six months too late!

In my own state of Colorado, evidence found at the scene indicated that Dr. W. Randolph Lovelace and his wife survived the crash of their rented plane in December, 1965, but died of exposure before they were found, even though countless hours were spent in searching for them. And, as I recall, it was during that search that we lost one of our Civil Air Patrol planes piloted by an Air Force Sergeant from Lowry Air Force Base.

But such tragedies are not limited to our Western states. In fact, you documented in your "System for Downed Aircraft Location" study, published in January, 1965, the four-day struggle for survival of Drs. Miller and Quinn, whose plane went down in the small state of Vermont on February 21, 1959, but was not found until May 5 of that year. Dr. Miller kept a diary, too. It closed with: "Goodby all. This is saving a lot of experiments, I hope."

I could cite other examples, but this map tells the story more graphically.

Despite the tens of thousands of search hours spent by the Civil Air Patrol, the Air Force, the Coast Guard and the FAA, planes and their occupants are still missing in various parts of the country, not only in the Western Region. It

states me that the FAA notice gives the false impression that the problem is isolated in the Western Region. This stems from the fact that in illustrating the extent of the problem, the FAA on page 3 of the Notice of Proposed Rule Making stated that, "in the Western Region 31 aircraft have been listed as missing and have not been located during the 10 year period between 1957 and 1967." I did not have access to the statistics on missing and unlocated aircraft for this ten year period and therefore have used the period since the Aerospace Rescue and Recovery Service was inaugurated in October of 1961 extending through December 31, 1967. I might add, also, had I continued the period through the month of January, 1968, I would have added two more missing planes to my own state of Colorado, one of these has been missing since the first day of January, piloted by a Longmont, Colorado, doctor, and the second plane four members of a Chicago family 12 with four members of a Chicago family aboard.

The crosses on the map represent the general areas where searches have been conducted by the Aerospace Rescue and Recovery Service, Civil Air Patrol and Coast Guard, for those aircraft which have not been located during the past six years.

I would like to point out that the Eastern Region—not the Western Region—has the greater number of missing aircraft. Florida leads with 7 and possibly 8 since in one case it is not certain whether the plane is lost in Florida or Alabama. South Carolina has 5, followed by North Carolina which has 4 and possibly 5 because it is not certain in which of 4 states one plane went down. Alabama, Tennessee, Kentucky and New York, each have been involved in two multi state searches.

I think it is noteworthy that there are five aircraft that have never been found in the New York-New England area during the past five years. One is missing in the relatively flat and certainly well populated state of Ohio.

In the Central Area, which includes Colorado and virtually all of the Continental Divide, there are only ten of these completely lost aircraft. But, note that four of them are in the State of Michigan, one in Illinois and one in Missouri. There is only one in the Rocky Mountain area, and there is some question whether it actually is in Colorado or Utah. If it is in Utah, that would put it in the Western Region. Wyoming, which is both mountainous and sparsely populated, has not had a downed aircraft which was not ultimately located.

Washington and Oregon, together, head the Western Region in the number of aircraft which have not been found during the last five years. There are eight and perhaps nine aircraft which have disappeared in these two states without a trace since October, 1961. Again, note that Idaho and New Mexico, both of which are mountainous and have large sparsely populated areas, have not had a plane down they have not been able to find.

Alaska, which is named separately in the statistics, has had eight aircraft which have completely disappeared since October, 1961.

There certainly has been no lack of effort to locate missing aircraft. Aerospace Rescue and Recovery Service records show that from 1961 through December 31, 1967, a total of 235,404 hours of search have been conducted. Of this total number of hours of search, 10,500 hours of search were flown by the Air Force, the Coast Guard and others during this period. The cost has been both not only in terms of operational costs, but also in terms of lives lost while searching for missing aircraft. In the last three years, ARRS records show that two C.A.P. aircraft and four lives have been lost during search missions. In Colorado last year, we conducted 18 search missions for missing aircraft at an average cost of \$2,916 each.

Searches often seem that are extremely difficult to measure. In addition to the personnel and money the trouble of the accounting of these completely missing aircraft, there are also some statistical hardships involved, because in most states, under the common law rule, bodies cannot be buried until seven years have passed and a presumption of death is established. This one cause alone is a problem with accurate real estate and family income.

The primary concern, however, is not the finding of wreckage, but the saving of lives from the system of discovering the emergency and locating people. It may seem as if we had to take advantage of our advances in technology. Our present system is plagued with costly, unnecessary danger, tedious and often futile effort. In most instances, we don't know that an emergency has occurred until the aircraft is reported as overdue at its destination. Quite a few hours may elapse before a report is made to the Aerospace Rescue and Recovery Center. From there, there is further delay while a check is made of other airports to determine whether the plane may have landed at other than its announced desti-

nation. Only after this check is made is the Civil Air Patrol alerted. More delay occurs as the C.A.P. organizes its search teams. Then, following a grid pattern, visual search is begun along the probable route. This boils down to a practice of flying low and looking, and looking, and looking, and looking some more.

As time passes, the chances of successful rescue of survivors of the downed aircraft grow less and less. I call your attention to the study made by the FAA which is mentioned on page 9 of the Notice of Proposed Rule Making. The FAA found after studying survival cases that 50 percent of all persons who are rescued from downed aircraft are recovered within the first 12 hours, and seventy-five percent of the persons saved are recovered within the first 24 hours. Thereafter, the probability of rescue diminishes sharply.

The blue dots on the map show the approximate area where aircraft were located after they had been missing for three days or longer. I should explain that the Central Region shows these locations for the past Three Years; and 12 of the blue dots in the Central Region are for aircraft located in 1965. Since the Eastern Region and the Western Region do not keep these records for longer than two years, comparable information is not shown for 1965 in these two regions.

In the Northeastern part of the United States there were five aircraft during the past two years which were missing for more than three days but were subsequently located. One of these, found on Haystack Mountain near North Bennington, Vermont, on July 4, 1967, had been missing since September 13, 1965. Another one, located October 12, 1967, 100 feet from the top of Mt. Williams near Williamstown, Massachusetts, had been missing since June 25, 1967, when a honeymooning couple from Baltimore, Maryland, were last heard from en route to Montreal. The Central Region had 17 such aircraft found in the two-year period, 1966-1967. The Western Region had nine, including one in the Baja, Lower California area.

Of more importance, the red circles on the map represent the area where an aircraft was missing for more than 24 hours, but was found before the end of the third day. Again, they seem to be fairly evenly distributed across the country. The Eastern Region had 13. Six of these were in the New York, Pennsylvania, New Jersey area; two in North Carolina; two in Alabama; and three in the Southern Georgia-Northern Florida area. The Central Region also had 13. Texas and Colorado accounted for 7 of the 13 that were found in this region.

The Western Region had 14, with California and Washington state accounting for 11 of the 14.

In summary, this map shows that in the last six years there are 60 aircraft in the continental United States and Alaska which are missing and have never been found. In the continental United States in the last two years, 36 aircraft were missing for more than three days, and 40 aircraft were missing for a period of from one to three days. The map also shows clearly that aircraft "emergencies" are not limited to mountainous areas, large bodies of water or sparsely settled areas. It indicates that the proposed FAA Rule should be broadened. In support of that position, I would like to read you part of a letter I received last fall from a doctor in Ogdensburg, New York. It reads as follows:

"I, too, have spent long hours on a search mission in the Civil Air Patrol. I shouldn't have been there really, as the weather was marginal and I am strictly VFR. However, the thought that people might be alive and lying out in the snow with broken legs kept me going.

"We never found the wreck. A farmer on a tractor did after we had searched for almost three days.

"A crash locator beacon would have shown us the way in 30 minutes."

I completely agree. And I think that the experiences of the Army, Navy and Air Force in locating and rescuing downed pilots in Vietnam clearly demonstrate the value of locator equipment. Then why have we not been able to obtain more widespread voluntary use of this equipment? There are a number of reasons which we should recognize and deal with.

First, I think we have created a bad image of the instrument by calling it a "crash locator beacon. No aircraft manufacturer likes to admit that his planes may crash. No pilot plans to crash. On the other hand, every student pilot is thoroughly schooled in the fact that he will probably encounter emergency situations. By the time he gets his private pilot's license, the student-pilot has demonstrated many times his knowledge of emergency procedures. The automobile industry did not call their flasher lights, "trouble lights" or "accident flashers" — they call them emergency flasher signals. We should refer to these aircraft

beacon beacon is emergency beacon. Furthermore, since we seek to find downed aircraft more quickly, we might give the entire system a catchy name whose initials suggest its function. We might call it "Emergency Aircraft Radio Location Instrumentation." Phonetically, the first initials spell EARLI.

Cost is the second problem. But this can be solved if we can get utilization of the beacon in large enough numbers.

Also related to more wider acceptance and use is the problem which confronts our Ham radio operator who seeks to make contact with other Hams. To make contact, someone must be listening. I am pleased to note that the FAA states it is planning to equip more of its own aircraft with equipment capable of hearing in on small transmitters emitting signals on the emergency frequencies. At present, the Air Force regularly monitors the VHF emergency frequency—243.0 Mhz. This likelihood that a military aircraft will be within range at any given time is relatively small, however, there is one other suggestion that I think deserves very serious consideration. Why not enlist the help of our commercial air carriers? It could be done at minimal cost, and without undue burden on the crew. What I am suggesting is the installation of a simple receiver on our commercial passenger and cargo aircraft to monitor the VHF and UHF distress frequencies. Operational when the main power switch of the aircraft is activated, the receiver would be inoperative when the main switch was turned off. A blinker light would indicate to the crew that a distress signal was being received, and the only action required of the crew member would be to snap an audio switch to verify that a wavering distress signal was in fact being received. The pilot then would immediately fix his position, call the nearest Flight Service Station and report that he had received a distress signal. In a matter of seconds, hours or even days would be saved—for in those few seconds it has been established that an emergency exists, the approximate location is known, and a beacon is known to be operating on which rescue aircraft can home.

Within minutes, a ground or air rescue team, hopefully with an accompanying medic, is homing on the beacon. Extension of this system to substantial segments of general aviation would enlarge enormously rapid location and rescue of downed aircraft. Think of the countless hours of searching this system could save. Think of the lives that can be saved and the suffering that can be alleviated by getting medical attention to the injured quickly.

I commend the FAA for its investigation into the locator beacon in 1963 and commend them for their issuance of the Notice of Proposed Rule Making. But I confess that I do not believe their present proposal is either realistic or enforceable. General aviation is growing rapidly. The smallest aircraft are used extensively for pleasure and business in cross-country flights. At what point must portable equipment as suggested by the proposed FAA Rule, be packed up? Who will enforce the Rule? If I fly from here to Denver, must I have the equipment? Probably not if I take regular airways via Kansas City. But suppose there are storms, and I have to detour North and find myself over Lake Michigan and into Minnesota and the Bad Lands. Do I have to stop and install the equipment? Will this involve detailed mandatory flight plans for all weather? If a pilot flies from Chicago to New Orleans and crosses the Mississippi Delta, does he have to install a beacon before he goes, or on his way down, and who will inspect his plane on arrival?

Frankly, it is my feeling that sound common sense says that all pilots, like millwrights, are optimists. Very few will install a locator beacon in their planes, although they may well agree that their neighborhood pilot should have one. Hence, an enormous administrative problem will arise under the Rule, or it will simply be ignored.

Radio and Computers. We must have a mandatory required system—a system that will require emergency location in all new general aviation aircraft, except perhaps one which operate almost exclusively under instrument flight. A system which will, within a stated time, require installation in all "new" aircraft in operation; a system which will not only broadcast but receive; a system which, when all will save lives, reduce suffering, and avoid damage and costly low-level search sweeps.

I am confident that there is represented in this room the wealth of technical expertise to convert the dream system of downed aircraft location that could be devised. I urge that you lend your support and collective knowledge to that dramatic goal.

Mr. WILLIAMS of New Jersey. Mr. President, will the Senator yield?

Mr. DOMINICK. I am happy to yield to the Senator from New Jersey.

Mr. WILLIAMS of New Jersey. Would these locators go on all aircraft?

Mr. DOMINICK. No. They would go on fixed-wing aircraft. They would not go on jets, aircraft used in air transportation, military aircraft, aircraft used solely for training purposes not involving flights more than 20 miles from its base, and aircraft used for the aerial application of chemicals, or crop dusters. It would not be on helicopters.

Mr. WILLIAMS of New Jersey. This would be for private aircraft?

Mr. DOMINICK. Private fixed-wing aircraft.

Mr. WILLIAMS of New Jersey. Mr. President, this proposal impresses me as a very worthy and necessary amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado (Mr. Dominick).

The amendment was agreed to.

Mr. SAXBE and Mr. MILLER addressed the Chair.

The PRESIDING OFFICER. The Chair heard the Senator from Ohio first. The Senator from Ohio is recognized.

Mr. SAXBE. Mr. President, I yield to the Senator from Iowa.

Mr. MILLER. I thank the Senator.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. MILLER. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

On Page 61, line 4, insert the following after the word "the": "employer or his representative has been notified in writing, signed by the delegate of the Secretary, setting forth specifically the nature and imminence of the danger compelling immediate action and the".

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. MILLER. Mr. President, the provision of the bill to which my amendment relates provides for authority by the Secretary to delegate his authority to issue orders compelling immediate action where there is not sufficient time in light of the nature and imminence of the danger to seek a temporary restraining order or injunction. There is nothing in the authority which requires the Secretary's delegate to notify the employer or his representative of the danger or imminence of danger. There is a provision farther on in this section requiring the Secretary by regulation to provide procedures whereby an aggrieved employer could achieve a prompt reconsideration of action.

As a basis for obtaining that reconsideration and, further, as a basis for good procedure, it seems that the employer should be notified in writing, signed by the one to whom the Secretary delegated the authority, and that is the function of the amendment.

I think it would enable the regulations regarding reconsideration to be carried out much more expeditiously if this language were added. I have discussed the amendment informally with the manager of the bill and I hope this amendment will be accepted.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. If this amendment to this sentence is agreed to, will it still be possible to strike the entire sentence, including this amendment and then substitute some other provision?

The PRESIDING OFFICER. The Chair is advised that the section as amended would be subject to a motion to strike in entirety.

Mr. JAVITS. The reason I say that, in all fairness to the Senator, is this. With the administration we are trying to meet another element of this issue. High-level concurrence in the department should be required where they are going to close the whole plant or substantially the whole plant. We are working on that. I think we can agree to it, but it may result in affecting this sentence. We will do our utmost, and I am sure we can, to keep the Senator's idea intact with respect to serving a written finding, which is really what he is seeking, in connection with such a matter.

Mr. MILLER. I appreciate the thoughtfulness of my colleague from New York. I understand the Senator from New York was working on something in this section.

Mr. JAVITS. That is correct.

Mr. MILLER. But I understood this amendment would not interfere with it. From the ruling of the Chair it is clear it will not interfere with it.

Mr. JAVITS. That is correct.

Mr. MILLER. I hope we can go on and dispose of the amendment and then I will be pleased to work with the Senator on his amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. WILLIAMS of New Jersey. Mr. President, I have discussed this amendment with the Senator from Iowa and it makes a great deal of sense. In my judgment it is not necessary but it would be a very helpful addition to the bill.

Mr. MILLER. I thank my colleague.

The PRESIDING OFFICER. If there be no further discussion of the amendment, the question is on agreeing to the amendment.

The amendment was agreed to.

Mr. SAXE. Mr. President, I have an amendment at the desk, which I call up.

The PRESIDING OFFICER. The amendment of the Senator from Ohio will be stated.

Mr. SAXE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 56, line 2, insert the following: "and which standards, when applied to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce."

Mr. SAXE. Mr. President, this is an amendment which applies to those who manufacture machinery products that go into interstate commerce, specifically applying to those who manufacture movable equipment such as dirt movers, tractors, and other heavy equipment. If, after the expiration of the initial stage of this bill, each of the States were permitted to set differing safety standards for dirt movers, it would place a tremendous burden on interstate commerce. This

amendment provides that they may do so because there may be circumstances that would so require, but the words are put in, "compelling local conditions," and, second, that they "do not unduly burden interstate commerce."

This amendment is offered so that we do not have differing safety regulations on equipment moving from State to State in interstate commerce and to try to prevent States from making unreasonable limitations on certain type of equipment.

I have discussed the amendment with the manager of the bill, and I believe it is acceptable to him.

Mr. WILLIAMS of New Jersey. Mr. President, the amendment has been discussed, and it is acceptable to the committee.

The PRESIDING OFFICER. If there is no further discussion of the amendment, the question is on agreeing to the amendment.

The amendment was agreed to.

Mr. COOK. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. COOK. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 69, line 3: Strike out all after the word "plan." through and including the word "decision." on line 7, and insert in lieu thereof the following: "is not supported by substantial evidence the Court shall affirm the Secretary's decision."

Mr. COOK. Mr. President, on page 69 of the act as presently drafted appears the sentence:

Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan to be arbitrary and capricious, the court shall affirm the Secretary's decision.

I have proposed a change in my amendment, so that the language would read:

Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision.

The amendment merely states that an action will lie in regard to a State plan based on substantial evidence, and not based on the negative plea of arbitrary and capricious.

I think all Members of the Senate who have had an opportunity to practice law will state that they know of very few cases which anyone has won based on arbitrary and capricious action. In the first place, if the regulations provide that the Secretary can do it, and if he does it within the regulations, then obviously it is not arbitrary and capricious.

I have talked with the manager of the bill in this regard. This is the same language that was adopted by the Senate in the Coal Mine Safety Act. I believe the manager of the bill is perfectly willing to accept the amendment.

Mr. WILLIAMS of New Jersey. Mr. President, that is correct. We accept the amendment.

The PRESIDING OFFICER. If there be no further discussion, the question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. The Senate will now return to controlled time on the amendment of the Senator from Colorado (Mr. Dominick).

Mr. DOMINICK. Mr. President, I yield myself 5 minutes.

I would like to send to the desk a substitute amendment for the amendments we had been considering. I want, if I may, to read the amendment so that every Senator will be sure of what we are doing. We have worked this out with the Senator from New Jersey and the Senator from New York. I believe it is agreeable to all—

The PRESIDING OFFICER. The Chair is advised that no amendment would be in order until all time had been yielded back, but the Senator has a right to modify his own amendment.

Mr. DOMINICK. Mr. President, do I understand that I am not able to amend my own amendment before all time is yielded back?

The PRESIDING OFFICER. The Chair is advised that the Senator may not amend his amendment until all time is yielded back, but he may modify his amendment.

Mr. DOMINICK. I will modify my amendment.

The PRESIDING OFFICER. The Senator has that right.

Mr. DOMINICK. I will now modify my amendment as follows:

On page 39 strike all in lines 3 through "his working life" in line 9, and substitute the following:

"(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life."

On page 39, line 10, strike the word "such" and insert after the word "standards" the following: "under this subsection".

On page 71, line 22, strike the words "which if applied will assure that" and insert in lieu thereof the following: "dealing with toxic materials and harmful physical agents which will demonstrate the exposure levels at which".

Mr. DOMINICK. Mr. President, I now send the amendment to the desk so that the clerk will have it in its modified form.

Mr. President, before we tried to get together on the exact language, we were discussing the problem that the language on page 39 and page 71, in setting standards and in setting criteria, tried to assure that, no matter what anybody was doing, the standard would protect him for the rest of his life against any foreseeable hazard.

What we were trying to do in the bill—unfortunately, we did not have the proper wording or the proper drafting—was to say that when we are dealing with toxic agents or physical agents, we ought to take such steps as are feasible and practical to provide an atmosphere within which a person's health or safety would not be affected. Unfortunately, we had language providing that anyone would be assured that no one would have a hazard, or at least, we would require the Secretary to set standards so stating, and that in the HEW standard there would be a requirement to proceed on that basis, so that no one would have any problem for the rest of his working life.

It was an unrealistic standard. As modified, we would be approaching the problem by looking at the problem and setting a standard or criterion which would not result in harm.

Mr. WILSON of New Jersey. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Chair is advised that the Senator from New Jersey has 2 minutes.

Mr. WILLIAMS of New Jersey. Two minutes.

As I understand this amendment, it will provide a continued direction to the Secretary that he shall be required to set the standard which most adequately and to the greatest extent feasible assures, on the basis of the best available evidence, that no employee will suffer any material impairment of health or functional capacity even if such employee has continual exposure to the hazard dealt with for the period of his working life.

Certainly that is the objective, and included within this concept of unimpaired health and functional capacity is protection against diminished life expectancy.

Mr. DOMINICK. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator of Colorado has 7 minutes.

Mr. DOMINICK. Mr. President, I yield myself 3 minutes, for the purpose of having a colloquy with my colleague from New Jersey.

It is my understanding, if I may say so, that what we are doing now is to say that the Secretary has got to use his best efforts to promulgate the best available standards, and in so doing, that he should take into account that anyone working in toxic agents or physical agents which might be harmful may be subjected to such conditions for the rest of his working life, so that we can get at something which might not be toxic now, if he works in it a short time, but if he works in it the rest of his life it might be very dangerous; and we want to make sure that such things are taken into consideration in establishing standards; is that correct?

Mr. WILLIAMS of New Jersey. That is exactly correct.

Mr. DOMINICK. I appreciate the cooperation of my friend from New Jersey. I think we have worked it out to where it makes a lot of sense, at this point much more so than before.

Mr. WILLIAMS of New Jersey. I think it is clear, the objectives have been stated, and it strengthens the objectives of standards that will protect against physical impairment and loss of function.

The PRESIDING OFFICER. Do Senators yield back their remaining time?

Mr. DOMINICK. I yield back the remainder of my time.

Mr. WILLIAMS of New Jersey. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. Case). All remaining time having been yielded back, the question is on agreeing, en bloc, to the amendments—No. 1054 and No. 1058—of the Senator from Colorado (Mr. Dominick), as modified.

The amendments were agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. WILLIAMS of New Jersey. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I have a number of—

The PRESIDING OFFICER. Does the Senator from New York request that the order for the quorum call be rescinded?

Mr. JAVITS. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, are we under any time limitations?

The PRESIDING OFFICER. No, the time is uncontrolled.

Mr. JAVITS. Mr. President, I shall not detain the Senate but very briefly. There are a number of pro forma matters in the bill which need attending to, and if the manager of the bill will give me his attention, I think we can dispose of them quite quickly.

Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from New York (Mr. JAVITS) proposes an amendment as follows:

On page 69, between lines 10 and 11, insert:

"(14) For the purpose of this section, the terms 'State' includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands."

Mr. JAVITS. Mr. President, the sole purpose of this amendment is to make eligible to file what is called a State plan those territories and possessions of the United States which are spelled out in the amendment. This matter is not otherwise defined in the bill. I hope the manager will find the amendment satisfactory.

Mr. WILLIAMS of New Jersey. I am prepared to vote for it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I send to the desk another amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The ASSISTANT LEGISLATIVE CLERK. The Senator from New York (Mr. JAVITS) proposes an amendment to amend subsection (b), page 41, line 3, by adding a new paragraph "(7)" as follows:

"(7) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall include in the rule a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

Mr. JAVITS. Mr. President, in proposing that amendment, I ask the Senator from New Jersey to state whether he agrees with me in the following: We have, under this amendment, the concept of a statement which will help us better to enforce the law where a deviation from an existing national consensus standard is promulgated by the Secretary.

A national consensus standard, under this act, is a standard which has been developed by one of two organizations at the present time. The American National Standards Institute or the Fire Underwriters Association.

In the first place, this amendment ought to be adopted so that the people will have an explanation of why the Secretary is doing what he is doing.

The other aspect of the matter is that the bill provides for a National Institute of Occupational Health and Safety, and it is important to ensure these outside organizations, which are very important in this field, that the Institute is not designed in any way to preempt or limit

the activity or importance of national consensus organizations such as the American National Standards Institute. These organizations have made valuable contributions in this field in the past, and I hope they will continue to do so in the future. This is so that they may be reassured that the Institute represents no threat to them.

The other point I should like to make with respect to reassuring these organizations is to confirm the fact that it is expected that the director of the new Institute will take full advantage of the extensive expertise represented by members of technical societies and private standards development organizations which serve an important purpose and which should continue to function in the private sector of occupational health and safety.

Mr. WILLIAMS of New Jersey. On the latter point, I would certainly agree that that would be wise. Our hope is that that would come to pass.

The amendment reads:

Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall include in the rule a statement.

Is that what he does—include it in the rule?

Mr. JAVITS. Mr. President, I modify my amendment to provide in the third line that "the Secretary shall publish in the Federal Register," instead of "include in the rule."

I agree with the Senator.

Mr. WILLIAMS of New Jersey. I certainly agree to the amendment offered by the Senator from New York.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to, as follows:

"(7) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

Mr. JAVITS. Mr. President, I send to the desk another amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

Mr. JAVITS. Mr. President, the purpose of this amendment is to relieve the Secretary of the necessity for waiting to promulgate whatever standards he wishes to promulgate across the board but, rather, allowing him to yield to more urgent demands before he tries to meet others. I gather that from the technical point of view that kind of authority is necessary in respect to this particular bill.

Mr. WILLIAMS of New Jersey. That is a fine and very worthy amendment and addition to the bill.

Mr. JAVITS. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I send to the desk another amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 60, between lines 10 and 11, insert the following:

"(h) Pending approval of a plan submitted by a state under subsection (b) of this section, the Secretary may enter into an agreement with such state under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect such state which are not in conflict with Federal occupational health and safety standards promulgated under this act until final action is taken by the Secretary with respect to the plan submitted by the state, or two years from the date of enactment of this act, whichever is earlier. Except as otherwise provided in this act any state occupational health and safety standard which provides for more stringent health and safety regulations than do the Federal standards promulgated under this act shall not thereby be considered to be in conflict with such Federal standards.

Mr. JAVITS. Mr. President, the purpose of this amendment is, in the interim period during which State plans are awaiting approval, to allow the Secretary to contract with States which already have standards—and there are many such States—so long as they are no less strict than those of the Federal Government, insofar as there are any, so that the State standards may continue. Of course, the Secretary in such an agreement, can state any conditions he pleases, including the right to cancel the agreement on a given number of days' notice. But at least it will give him authority to continue worthy State operations until he is ready to step in with the authority given him by this bill.

Mr. WILLIAMS of New Jersey. As I understand it, this would fill the hiatus period.

Mr. JAVITS. That is correct.

Mr. WILLIAMS of New Jersey. I agree with it.

The PRESIDING OFFICER. The question is agreeing to the amendment.

The amendment was agreed to.

Mr. JAVITS. Mr. President, in the same connection, with regard to State plans, a number of States apparently want to have this question answered, and that is that State plans—this is for the purpose of legislative history—may contain appropriate provisions for granting variances as is provided by this bill for the Secretary under section 6(d). In other words, it is to make clear that whatever State plan the Secretary approves may have the same opportunity for the State to make variances as he retains under this legislation.

Perhaps I have not made myself clear. Under this measure, the Secretary may authorize variances by section 6(d) in the Federal standards for particular firms. The State can submit a total plan under certain restrictions and criteria, and so forth. It is not clear from the bill that a State plan may also contain a similar variance provision.

Mr. WILLIAMS of New Jersey. Certainly, that should follow. Where there is a State plan, there should be an opportunity for a variance as under the Federal program.

Mr. JAVITS. That is correct.

Mr. WILLIAMS of New Jersey. I find nothing understandable about it. In other words, there should be a similarity of opportunity for a variance under a State plan.

Mr. JAVITS. That is correct. In other words, it is not mandatory. A Secretary might not agree in a given case at the State level. But a State plan may include a similar provision with respect to section 6(d), with respect to variances.

Mr. WILLIAMS of New Jersey. The amendment states "may include," and the Secretary does not have to agree to the plan they do have, but it could be altered to be accepted by the Secretary.

Mr. JAVITS. That is correct.

Mr. WILLIAMS of New Jersey. That is fine.

The PRESIDING OFFICER. Would the Senator like to have that colloquy inserted before the vote on this amendment?

Mr. JAVITS. There is no amendment, Mr. President. I should like the colloquy to succeed the vote on the amendment.

The PRESIDING OFFICER. The record will stand as it is.

Mr. JAVITS. Mr. President, I send to the desk another amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At an appropriate place in the bill insert:

SEC. —. Section 5108(c) of title 5 United States Code is amended by adding a new paragraph (10) at the end of the subsection to read as follows:

"(10) (a) the Secretary of Labor, subject to the standards and procedures prescribed by this chapter, may place an additional twenty-five positions in the Department of Labor in GS 16, 17, and 18 for the purposes of carrying out his responsibilities under the Occupational Safety and Health Act of 1970"

"(b) the Occupational Safety and Health Review Commission, subject to the standards and procedures prescribed by this chapter, may place ten positions in GS 16, 17, and 18 in carrying out its functions under the Occupational Safety and Health Act of 1970."

Mr. JAVITS. Mr. President, this is simply to accept what the Senate has decided and to implement it. This is an administration amendment. The Secretary of Labor is now the man who is going to establish the standards. The Senate decided that. The Secretary is now seeking an additional 25 positions required for that purpose. The Occupational Safety and Health Review Commission just established by a vote of the Senate will need hearing examiners, so we are asking 10 places for that.

Mr. President, I ask the clerk to change the word "panel" in the second line of subsection (b) of the amendment to read "commission."

The PRESIDING OFFICER (Mr. Case). The amendment is so modified.

Mr. WILLIAMS of New Jersey. Mr. President, I want to say that while I voted against this addition to the bureaucracy, having lost, additional employees will be needed in the expanded bureaucracy. I take the last record vote to be direction to me to accept the amendment, which I shall do.

The PRESIDING OFFICER (Mr. Bellmon). The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. JAVITS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 88, line 7, strike "October 1, 1971" and insert in lieu thereof February 1, 1972".

MR. JAVITS. Mr. President, this is merely changing the date, because of the time elapsed since the bill was first reported, of the report of the commission to review the workmen's compensation system of the United States. We made a very strong case for the inequities and the inequalities in workmen's compensation. In view of the time elapsed since the bill was first reported, we want to put ahead the date when the report by the commission is required.

THE PRESIDING OFFICER (Mr. Bellmon). The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

MR. JAVITS. Now, Mr. President, I have another amendment but this one may be controversial and I would like to submit it for discussion and invoke the consideration of the distinguished Senator from New Jersey (Mr. Williams).

Mr. President, I send an amendment to the desk and ask that it be stated.

THE PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment as follows:

On page 61 following the word "issue" through the words "first obtained" in line 6 and substituting the following:

"Such an order to close a business or plant, in whole or in substantial part, he shall provide that such an order may not be issued until the employer has been notified in writing, signed by the delegate of the Secretary, setting forth specifying the nature and imminence of the danger compelling immediate action and the concurrence of an official of the Labor Department appointed by the President with the advice and consent of the Senate is first obtained."

MR. JAVITS. Mr. President, this deals with the imminent danger closing question for 72 hours which has so worried Members of the Senate and I think members of the business community as well. It would seek to elevate the level of consent required on the part of the Department of Labor where it is a matter not of just shutting down a machine, but of closing an entire plant or a substantial part of it, to an official of the Department of Labor, either the Secretary, the Under Secretary, or the Assistant Secretary, or other presidentially appointed officers. They are all subject to confirmation by the Senate which therefore is an additional item of protection, in view of the fact that the Senate in its wisdom turned down resort only to the courts, so that the Secretary will be exercising this power. It is an effort, somewhat, further to protect against arbitrary closings. I pledged, when the Senate voted in respect of the injunction question, that I would submit an amendment of this nature, and I am submitting one that has been carefully prepared and works in a limited way because it deals only with the big question of the closing of a business or a plant in whole or in substantial part.

I feel it is only fair that a man who is confirmed by the Senate should be required to concur, rather than just a regional officer. If we left the bill as it is, it would be any regional director on the part of the Labor Department.

The reading amendment would elevate this to Cabinet or subcabinet rank. This is somewhat what the Saxbe and Schweiker amendments tried to do. It does buttress the situation to some extent because, as we all know, when we are dealing with someone the Senate has confirmed, we have a lot more "handle" on him, to use a colloquial expres-

sion, than a regional director or just some fellow in the Department of Labor.

I hope very much, because this was quite a signal victory for the Senator from New Jersey (Mr. Williams), that he will be generous in respect of his victory, and that he will allow us at least this modest additional safeguard.

I point out that we preserve unimpaired Senator Miller's amendment with respect to the serving of notice in writing.

Mr. WILLIAMS of New Jersey. Mr. President, it does not require any generosity on the part of the manager of the bill. I think that, first, the reduction to writing of the reason for closing, as offered by the Senator from Iowa (Mr. Miller), is a helpful addition to the bill in the imminent danger cases. As I understand the amendment of the Senator from New York, I think it is a more helpful addition to the bill to go to an officer of a higher level.

I accept the Senator's amendment and not out of any generosity but in appreciation for improving the bill.

Mr. JAVITS. I thank my colleague very much. That, too, is very generous of him.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

Mr. JAVITS. Mr. President, that is all I have on the bill. I think that wraps up everything the administration and others had in mind.

Mr. WILLIAMS of New Jersey. Except for the chairman of the Committee on Labor and Public Welfare who is now seeking the floor.

Mr. YARBOROUGH. Mr. President, I rise in support of the bill introduced by the chairman of the Labor Subcommittee, Mr. Williams of New Jersey, as principal sponsor and of which I am an active cosponsor, which was reported by the Committee on Labor and Public Welfare after extensive hearings and exhaustive debate in our executive sessions. During the course of the debate in the Senate today, this body will have the benefit of the careful work which the subcommittee and committee have done in considering the most important piece of legislation.

We hear throughout the debate the statement that practically everyone wants an occupational health and safety bill. And I am sure that practically everyone does. But some want a bill which will help the working people of the United States and some other people just want to be able to say that a bill has been passed. No one can disagree that there is a great need for a real safety bill.

Mr. President, I want to commend the distinguished chairman of the Labor Subcommittee for his able work on this bill.

For many years, a Federal occupational health and safety bill has been sought. While the number of industrial workers in this country has grown by tens of millions, we have been debating the question. Now we have come to the point of passing the bill to protect 80 million industrial workers.

The National Safety Council has found that there were more disabling injuries and deaths in the work situation than were due to motor vehicle accidents in the first 6 months of 1967. Specifically, there were 850,000 motor vehicle injuries and 23,600 deaths—and 2.2 million work injuries resulting in temporary or permanent disablement and 6,900 deaths.

In 1967, work accidents and illnesses cost the American economy over \$8 billion. Ten times more man-days were lost to injury than were lost because of strikes in 1966.

We read the headlines concerning the strikes that are claimed to damage the economy. We should stop and consider the fact that we lose 10 times as many man-days of work in America every year due to industrial accidents on the job than we lose in strikes, lockouts, and walkouts all combined.

During the first 6 months of 1967 in Vietnam, there were 4,899 deaths and 31,913 military personnel wounded or a total of 36,812 injuries and deaths; that is, there were roughly 30 times as many people injured at work in the United States as were injured fighting in Vietnam during the same 6 months of 1967.

The legislation is long overdue. The devastating statistics and the bad record we have in industrial accidents in this country show that this country should have had such legislation years ago.

Yet in 1968, when Congressman O'Hara and I introduced in to the House and Senate the first comprehensive occupational health and safety bill, we drew the critical fire of several organizations who claim that legislation of this type is too expensive.

One may well ask too expensive for whom? Is it too expensive for the company who for lack of proper safety equipment loses the service of its skilled employees? Is it too expensive for the employee who loses his hand or leg or eyesight? Is it too expensive for the widow trying to raise her children on meager allowance under workmen's compensation and social security? And what about the man—a good hard-working man—tied to a wheel chair or hospital bed for the rest of his life? That is what we are dealing with when we talk about industrial safety.

We should have uniform standards so that no one industry would gain an advantage over any other industry. It would be far cheaper for our economy. It would save money in workmen's compensation premiums.

We are talking about people's lives, not the indifference of some cost accountants. We are talking about assuring the men and women who work in our plants and factories that they will go home after a day's work with their bodies intact. We are talking about assuring our American workers who work with deadly chemicals that when they have accumulated a few years seniority they will not have accumulated lung congestion and poison in their bodies, or something that will strike them down before they reach retirement age.

We know that our worker's lives can be protected. It's good business to protect workers. And yet in 1966, there were 14,500 industrial deaths—2.2 million disabled—and a total of 7 million who sustained some injury in industrial accidents.

That is why I introduced my occupational safety bill last year and why I was happy to defer as the principal sponsor of S. 2123 to Senator Williams, the chairman of the Labor Subcommittee, but I am a full cosponsor with him.

Senator Javits, on behalf of the Nixon administration also introduced a safety bill in this year. And Senator Dominick proposed as a substitute yesterday the latest administration proposal.

Let us compare these bills. Who sets the standards? Under both bills any consensus standard of a national standards producing organization may be used. But what if the Secretary of Labor thinks a stricter standard is necessary? Under the Williams-Yarborough bill the Secretary of Labor may set interim standards for a period up to 6 months, thereafter the Secretary may promulgate his own standards after hearings.

Under the Nixon administration proposal a safety board established by Congress and appointed by the President must set the standards. This board of five members must have previous training in this area—but like all other boards of this type it is almost inevitable that it becomes a captive of the industries it regulates.

Who enforces the act? Under the Williams-Yarborough proposal the Secretary of Labor would enforce the law with appeals from his determination in the Federal courts. Under the Nixon proposal the Secretary would ask for a hearing before the Appeal Commission—another Presidential board—which would determine whether there was a violation. If the employer did not agree with the board's determination he would be allowed to appeal to the Federal courts. Again the administration is trying to use a board to delay the enforcement of the act.

What about criminal penalties? The Williams-Yarborough bill provides for a penalty of \$10,000 and up to 6 months in jail for any willful violations of the standards. The Nixon administration bill makes no such provision.

Do you know what the difference is? We say penalize the man who willfully violates the law. The Nixon administration proposal would do no such thing.

As you can see—everybody is for safety—it is just that some people want to talk about it, and others want to do something about it.

I am sure that the Members of this body will not be fooled by slogans—a law without teeth is like a dull knife—it looks fine until you try to use it for its intended purpose.

There is much talk in the United States today about pollution of our environment, and the necessity of prevention of that pollution in order to prevent slow death. What we discuss today is far more urgent—today we discuss sudden death for tens of thousands of American Industrial workers, and millions disabled every year—now. The 80 million American industrial workers are entitled to that protection now. Too many years and too many lives have been lost. All the bill requires is reasonable safety devices in plants and industry to protect the 80 million American workers. The Williams-Yarborough is not against industry—it is against death and disability. With all the lost years and lives and injuries and agony behind us, it is time to act positively and constructively now.

We have before us today an opportunity to create a major change in the industrial life of the United States, and opportunity to say to all the people of this land that our scandalously high rates of on the job injury can and will be stopped. We also have the opportunity to say to the people of the United States that slogans are not more important than deeds. If you believe in slogans, support the weak slowdown substitute, but if you believe as I do that all the working people of

the United States are entitled to protection from on the job injuries caused by failure of reasonable safety standards, vote for the bill as reported from your Committee on Labor and Public Welfare.

I yielded to the Senator from New Jersey as chairman but I am proud to be one of the cosponsors of the bill. I commend him for his fine work on it. We have about come to the time of passage. The bill is not as strong as the bill that came from the committee. It is not quite as good. But it is landmark legislation.

The leadership of the Congress is to be commended for having this session after the election. If we had done nothing else but pass the occupational health and safety bill to protect the 80 million industrial workers of America, this session would have been justified. This is major breakthrough legislation. It is a great advance for the American people who work in our economy.

I again thank the chairman of the committee. We had campaigns this year. He took time off at great risk to complete the bill. I did also. However, my risk did not turn out the same as was his.

The National Safety Council has been pleading for occupational health and safety laws for years despite the fact that many industrial organizations of the country—not speaking of any one business or company, but speaking of trade organizations—have opposed this legislation.

It is something that is worthy of the Senate and the House of Representatives. It is a great piece of landmark legislation that will go down in history as one of the best things to protect the working men and the economy of America.

Mr. WILLIAMS of New Jersey. Mr. President, I appreciate the comments of the Senator from Texas.

I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I know that we are ready for third reading.

At this time I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

(Putting the question.)

The amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. MUSKIE. Mr. President, I am pleased to support the Occupational Safety and Health Act of 1970 as reported by the Labor and Public Welfare Committee. This legislation must be a high priority item for this Congress.

At a time when we talk about enhancing the quality of life, it is inconceivable that 11,500 workers are killed each year in industrial accidents, while 2.2 million more are disabled through job-related

accidents. The figures on new cases of job-related illness and disease are equally disturbing. The Public Health Service estimates 390,000 new occurrences of occupational disease annually—including the dread black lung disease, emphysema, and the newly discovered perils of mercury poisoning. In my own State of Maine, for example, there were 4,801 manufacturing and 2,093 nonmanufacturing injuries and/or diseases reported in a total work force of approximately 420,000 in 1969. These figures are shocking, and they should stand as a clear warning that we have not been doing enough to protect workers on the job.

Mr. President, a jumble of differing State laws currently regulate occupational health and safety. Only four States have adequate standards. Standards in 38 States do not even meet one-half of comparability with those set by the American Standards Association. In States with strong occupational safety and health standards, the accident rate is 19 per 100,000 workers. In States with weak programs, it is 110 per 100,000—an increase of 500 percent. Nowhere are enforcement mechanisms and penalties adequate to force industry compliance with existing standards.

Even in fields where strong Federal laws do exist, such as coal mine health and safety, lack of enforcement has meant virtually no decline in the accident and death rates. While the Federal coal mine health and safety legislation passed last year should help to reduce black lung disease, other industries continue unregulated. Cotton dust in textile mills, for example, has caused byssinosis—brown lung—in over 10 percent of the 819,000 workers in that field.

Mr. President, voluntary standards—which frequently represent the lowest common denominator—have not worked effectively. S. 2193 would provide the Secretary of Labor with authority both to establish and enforce new national occupational safety and health standards within 2 years.

There has been considerable controversy surrounding the role of the Secretary of Labor under this legislation. I am pleased that a majority of the members of the Labor and Public Welfare Committee voted to empower the Secretary with both standards-setting and enforcement authority. I concur with the committee's statement that—

Rather than dividing responsibility by creating yet another agency . . . a sounder program will result if responsibility for the formulation of rules is assigned to the same administrator who is also responsible for their enforcement and for seeing that they are workable and effective in their day-to-day application . . .

Mr. President, I reject the argument of those who claim that the standards-setting and enforcement authority should reside with independent boards. Such boards traditionally have been cumbersome, inefficient, and overly responsive to business pressures. The Secretary of Labor has traditionally been given the responsibility to set and enforce labor standards—as he does with public contracts under the Walsh-Healy Act, prevailing wages under the Davis-Bacon Act, and the minimum wage under the Fair Labor Standards Act. Given this long history of standards-setting and enforcement authority within the office of the Secretary of Labor, the argument that independent boards would have more professional expertise and greater impartiality in the field of occupational safety and health loses its strength.

Mr. President, a distinguished group of citizens, including the former Secretary of Labor, the former Secretary of Interior, and several noted scientists, recently signed a letter endorsing the provisions of S. 2193. I ask unanimous consent that the text of that letter appear in the Record at this point, and I call particular attention to their statement:

Although the burden of hazardous work-places falls most heavily upon the blue-collar workers, the problem of occupational safety and health affects all Americans. The in-plant environment is merely a concentrated microcosm of the outside environment. The environmental health hazards that workers face affect the entire population to a lesser degree . . .

Mr. President, the Occupational Safety and Health Act of 1970 deserves our full support as an important step toward fulfilling our commitment to enhancing the quality of American life. I urge speedy approval of S. 2193.

There being no objection, the letter was ordered to be printed in the Record as follows:

**ENVIRONMENTAL ACTION,
Washington, D.C., October 7, 1970.**

MY DEAR SENATOR: As concerned citizens, environmentalists and members of the academic and professional communities, we feel that the Williams and Danahill Bills (S. 2193 and H.R. 16785) are the most important pieces of legislation presently before the Congress. The bills will have crucial significance not only for the bluecollar work force, but for all Americans.

America's eighty million working people spend an average of forty hours a week in some of the most polluted, physically hazardous and psychically devastating environments found anywhere. Eight per cent of these citizens work in places where no type of health service is provided, and the protection given the remaining twenty per cent varies from excellent to minimal.

According to the government's raw and probably vastly understated figures, nearly 400,000 workers have died, and 50,000,000 have been disabled from work-related diseases and injuries in the twenty-five years since the end of the Second World War. The annual figures amount to over 15,000 deaths and 7,000,000 injuries of which 2,500,000 are disabling. The figures, as appalling as they are, can never adequately convey the agony of the injured and the anguish of the family, much less the worry, the discomfort and the boredom that arise from the unhealthy, unsafe working conditions under which the health of millions of workers is being regularly eroded and under which many workers simply wait for the inevitable "accident" to happen.

As in other areas of environmental concern, our commitment to a technology of life and to the wise use of our most precious resources appears to have fallen behind our commitment to a technology of uncontrolled growth. A technological genie has unlocked thousands of more efficient and productive, but often more hazardous, processes. For example, while there are approximately 600 toxic chemicals now in industrial use, and more than 900 being added every year, recommended industrial safety standards exist for only about 450.

Although the burden of hazardous work places fall most heavily upon the blue-collar workers, the problem of occupational safety and health affects all Americans. The inplant environment is merely a concentrated microcosm of the outside environment. The environmental health hazards that workers face affect the entire population to a lesser degree. For example, the toxic effects of carbon monoxide were first discovered when two workers in a chemical plant died of asphyxiation. Now carbon monoxide is recognized as a danger to the entire population and some few steps are being taken to regulate it. Thiomethyls first caused asphyxiation, lead and mercury poisoning, and many other health perils were first discovered by the plant for the workers who worked with those substances. If industrial chemicals and processes were properly researched and regulated before they were put into use, the entire population would be spared.

Most industrial diseases and accidents are preventable. Modern technological and medical science are capable of solving the problems of noise, dust, heat, fumes, and toxic substances in the plants. However, existing legislation in this area does not begin to meet the problem. Except for the woefully inadequate

and unenforced Walsh-Healy Act, Mine Safety Act, the Construction Safety Act, the entire field of occupation safety and health is left to the individual states. The states have been loathe to develop and enforce standards for the protection of their workers. In the states today there are a total of 1,600 health and safety inspectors, and 2,800 game wardens. Elk and deer are better protected than working men and women.

Clearly, in the field of occupational health and safety the patch-work approach by the states has failed. There is a positive role that the Federal Government now must play. In a bold departure from previous legislation in this area, the Daniels' Bill in the House and the Williams' Bill in the Senate would:

Impose on industry the "general duty" of furnishing workers "a place of employment which is safe and healthful."

Empower the Secretary of Labor to set nation-wide health and safety standards for working environments.

Call for unannounced federal inspections of workplaces and prompt disclosure of the findings to workers.

Authorize the Secretary of Labor to impose fines and seek court action against employers who violate the "general duty" or specific standards.

Permit the Secretary of Labor to close down all or part of any plant where workers are in "imminent danger" of injury or disease.

Direct the Secretary of Health, Education, and Welfare to publish a list of all known or potentially toxic substances including those whose analysis is specifically requested by workers.

Allow employees to refuse work, without loss of pay, in areas where toxic substances are found at dangerous concentrations.

Though long overdue, this legislation represents an important first step toward solving the problem of occupational health and safety. Of particular importance are the strong enforcement provisions granted the Secretary of Labor coupled with the absence of the sort of administrative fragmentation which plagues alternative drafts of the Occupational Health and Safety Bill. Thus we strongly urge the immediate passage of the Williams and Daniels Bills in their present form.

Sincerely yours,

Mr. Stewart Udall, former Secretary of Interior; Mr. Willard Wirtz, former Secretary of Labor; Dr. Samuel E. Epstein, Chief, Laboratories of Environmental Toxicology and Carcinogenesis, Children's Cancer Research Foundation; Dr. Paul Cornely, President, American Public Health Association; Professor George Wald, Biology Department, Harvard University; Mr. Gary Soucie, Friends of the Earth.

Dr. Edward Martell, National Center for Atmospheric Research; Professor Garret Hardin, Biology Department, University of California (at Santa Barbara); Professor Rene Dubos, Department of Environmental Medicine, Rockefeller University; Dr. Mary Bunting, President, Radcliffe College; Professor Lentin Caldwell, Indiana University; Dr. Robert Ebert, Harvard Medical School; Professor J. D. Watson, Biology Department, Harvard University; Professor Paul Ehrlich, Chairman, Graduate Division, Department of Biology, Stanford University; Jerome B. Gordon, Author, "Life Stealers."

Mr. HART. Mr. President, today the Senate continues and I hope concludes consideration of the Occupational Health and Safety Act.

Statistics on industrial accidents and health hazards make an overwhelming case in favor of prompt passage of a stiff occupational health and safety bill.

With concern growing about the quality of life we are making for ourselves and our children, the day is long past when this Nation should leave the question of health and safety of its workers to chance.

Here are the statistics:

Industrial accidents kill 14,500 workers a year.

On-the-job accidents disable 2.5 million workers a year.

These deaths and accidents mean annual losses of \$1.5 billion in wages and \$8 billion in the gross national product.

The Surgeon General, in a 1967 study, estimated that 65 percent of the workers in 15,000 industrial plants were potentially exposed to harmful physical agents and that only 25 percent of these workers were protected adequately.

Based on that study, the Public Health Service has now estimated that 390,000 persons contract occupational diseases each year.

The Occupational Health and Safety Act, as reported by the Senate Committee on Labor and Public Welfare, represents, in my view, a sound and firm approach to the problem of improving working conditions in our plants and factories.

In brief, the bill:

First. Authorizes the Secretary of Labor to establish and enforce safety and health standards to protect workers against specific hazards or workers in specific industries.

Second. Gives employers and employees a voice in the standard-making process.

Third. Provides for Labor Department inspections and authority to issue citations for violation of standards.

Fourth. Gives employers and employees the right to appeal Department findings through administrative procedure and the courts.

Fifth. To protect workers against conditions not specifically covered by standards, contains a general obligation that an employer provide working conditions free of recognized hazards.

Sixth. Authorizes the Secretary of Labor to order an immediate halt in work if conditions would result in death or serious injury before the conditions could be corrected.

Mr. President, yesterday I voted to table an amendment which would have divided the responsibility for setting and enforcing the health and safety standards. I did so because to follow the recommendation of the administration would have been to dilute responsibility and therefore potentially diminish the effectiveness of the bill.

Mr. President, as I said at the outset of these remarks, the time is long past for this Nation to leave the safety of its workers to chance.

The time has come when we should pass a strong occupational safety act.

The version reported by the committee is stronger than the one proposed by the administration.

I urge prompt passage of this bill.

Mr. NELSON. Mr. President, I would like to express my wholehearted support for the measure presently being considered by the Senate, S. 2193. Enactment of this bill, the Occupational Health and Safety Act of 1970, would bring the promise of safe and healthy working conditions to millions of American workers who now in many cases have no choice but to endure the hazards in their places of employment.

The need for legislation regarding job safety is of such proportion that, in the face of it, one can only ask why action is so late in coming. The most obvious fact urging adoption of S. 2193 is that, according to the Secretary of Labor, 11,500 persons are killed each year as a result of industrial accidents. Equally tragic, however, is the fact that many of these deaths could have been prevented, had adequate safety precautions been taken. In addition to this terrible toll in lives, there are at least 7 million persons injured on the job annually in America, with 2.5 million of these injuries of a disabling nature, resulting in the

loss of 250 million man-days of work. In human terms alone, the loss to the Nation resulting from the lack of effective job safety programs is staggering, and should be a source of shame for us all.

In the area of occupational health, the situation is equally bleak. The human tragedy involved here is of a more subtle, less spectacular nature, yet the tragedy is just as grave, and perhaps more so. Workers spending large proportions of their lives in the job environment are forced to labor in conditions that gradually eat away at their vitality, leaving them often the victims of painful diseases, such as emphysema, byssinosis, and asbetosis.

Also of particular importance in this area is the use of pesticides, herbicides, and fungicides in the agriculture industry, and the resultant danger to farmers and farmworkers. As is the case in most discussions regarding occupational health, there is a lamentable lack of knowledge about the effects which the use of these chemicals is having on those working on our Nation's farms. But one statistic that is available, according to an official of the Department of Health, Education, and Welfare in testimony before the Migratory Labor Subcommittee, is that an estimated 800 persons are killed each year as a result of improper use of such pesticides, and another 80,000 injured. The suffering reflected in these figures, coupled with the fact that the major cause of them lies in the lack of effective safeguards on the use of pesticides, is itself a moving testimonial to the need for the passage of legislation such as S. 2193.

In addition to the known instances of occupationally related disease, estimated by the Public Health Service to be growing at a rate of 390,000 new occurrences each year there is the further danger posed by the use of new substances and processes in industry, of which we do not know the long-term effects on the human body. As the Labor and Public Welfare Committee report pointed out, it is estimated that a new and potentially toxic chemical is introduced into industry every 20 minutes. With increasing scientific knowledge pointing to hitherto unexpected relationships between occupational exposures and many of the so-called chronic diseases, it is apparent that much research is needed to make sure that these new substances and processes are not potential killers in disguise, research which the passage of S. 2193 would provide for.

It is true that the ideal situation would be one in which Federal legislation on an issue such as this would not be necessary, one in which the employers of our Nation, or the State regulatory agencies, could insure that workers everywhere enjoy clean and safe places in which to labor. But this simply is not the case; as the statistics in the committee report and all literature on this subject clearly point out, the incidence of industrial accidents and occupationally related disease is indeed on the rise, and not decreasing.

A major thrust of S. 2193 would be the establishment of programs of research, education, and training in the field of occupational safety and health. Programs such as these offer much promise toward bringing the shameful situations mentioned above to an end, especially since their emphasis is in moving toward safety and health at the workplace would be on prevention, and in making this a concern of everyone involved, both employer and employee.

Extensive work, in the form of hearings and committee deliberations, has gone into the preparation of S. 2193. The comprehensiveness of the bill reflects this careful preparation, and I would again urge that we **move rapidly toward its passage.**

If we are serious about our concern for providing a healthy environment for all of our citizens we must include as a high priority protection for the working men and women of our Nation in their places of employment. S. 2193, the Occupational Health and Safety Act of 1970, would move in that direction by providing coverage for several million American workers, and by testifying to the fact that we as a nation will no longer tolerate a situation where the cost of employment for many individuals is the strong likelihood that because of conditions in the workplace, they will be maimed or crippled by disease for life.

NATION'S RESPONSIBILITY FOR HEALTH AND SAFETY AT WORK

Mr. CRANSTON. Mr. President, the legislation now under consideration by the Senate, S. 2193, the proposed Occupational Safety and Health Act of 1970, has the potential to be a legislative landmark of the utmost importance to every family in the Nation. It is designed to insure a safe and healthful work environment for the 80 million men and women workers in our country, and hence to benefit their dependents as well. In addition, the vitality of the Nation's economy will be enhanced by the greater productivity realized through saved lives and **useful years of labor.**

When one man is injured or disabled by an industrial accident or disease, it is he and his family who suffer the most immediate and personal loss. However, that tragic loss also affects each of us. As a result of occupational accidents and disease, over \$1.5 billion in wages is lost each year, and the annual loss to the gross national product is estimated to be over \$8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation and medical expenses. The amount paid out in workmen's compensation alone is over \$2 billion annually.

The magnitude of the problem faced by this legislation cannot be overemphasized. It is conservatively estimated that some 14,500 persons are killed each year in industrial accidents. By the lowest count, another 2.2 million persons are disabled on the job in a single year. A recent study, authorized by the U.S. Department of Labor and conducted among a sample of California businesses revealed that this figure might be 10 times too low, and that the national figure might be closer to 25 million injuries. And we do not even have a realistic estimate of the number of workers who suffer or die from occupationally caused disease. Hopefully, we will learn this from the research on, and the collection of, such information, which is provided for in this bill. Our almost total ignorance of the nature and extent of the problem of work related disease is itself a cause for alarm and action. It is a sad example of the intolerably low priority that worker health and safety has been afforded by our society to date and a highly persuasive argument for the necessity of Federal action to vindicate these basic employee rights.

An example of the general inadequacy of information about these vital issues of the health and safety of our workers is that comparable figures for my own State of California are not available. The statis-

ties prepared by the California Human Relations Agency cannot be related to the national figures because of the different standards and definitions for reporting. California reports 759 work-related deaths in 1969. However, our proportionate share of the 14,500 deaths estimated by the U.S. Bureau of Labor is more on the order of 2,900.

At present, despite our uncertainty about the exact magnitude of the problem, we do know that industrial accidents alone inflict far greater casualties each year than has the Indochina war. The highest year's casualty rate in Vietnam occurred in 1968 when 12,588 of our servicemen were killed. In that same year, even conservative estimates show that 14,300 workers were killed on the job—1,812 more than died in Vietnam.

The latest summary of casualty figures, dated November 7, listed 43,959 killed in the Indochina war since the start of 1961. The number of persons estimated to have been killed on the job since 1961 is three times that figure—an estimated 138,900 workers.

Nearly 300,000 Americans have been wounded during the entire Indochina war, while over seven times that many are wounded and maimed on the job in 1 year alone—2,200,000 in 1969.

The great urgency of the problem is clear, as is the need for prompt and effective legislative action. Only through a comprehensive approach can we hope to effect a significant reduction in these job death and casualty figures. Our efforts to date have been uncoordinated, inadequate in coverage, and insufficiently funded.

In my own State of California, with the largest population in the Nation, we have the second highest budget for safety, \$3.3 million and the second highest number of inspectors in the Nation, 220. However, and these are the more telling figures, we spend only 58 cents per worker on safety and health, and have only 2.3 health and safety staff members for each 100,000 workers. Thus, in terms of money and staff per worker, we rank only ninth in the Nation.

While some States have acted to establish and enforce safety and health standards, only a relatively few have modern laws and have devoted adequate resources to their administration and enforcement. At least eight States have no identifiable programs in occupational health at all. The manpower devoted to health and safety is the best indication of our neglect—there are only 1,600 State safety inspectors, and less than 100 Federal inspectors. Four States have no inspection personnel whatsoever. Only three States have over 100 inspectors. Only three States have inspectors trained in the field of occupational health and hygiene. Ironically, there are twice as many fish and game wardens in the United States as there are safety and health inspectors.

The Nation and the Congress must recognize that this problem is one of national scope, and that it should be a national responsibility. The hazards which characterize modern industry are not the problem of a single employer, a single industry, or a single State jurisdiction. The spread and interrelationship of industry and the mobility of our workforce combine to require national action to protect the health and **safety of the worker.**

The initial version of this bill was introduced on May 16, 1969, by the Senator from New Jersey (Mr. Williams) and others. In a message to Congress on August 6, 1969, the President urged passage of a

comprehensive occupational safety and health bill. The Labor Subcommittee, of which I am a member, under the leadership of the distinguished and dedicated Senator from New Jersey (Mr. Williams), conducted extensive hearings on this subject on 12 days in Washington and three other cities. Senator Williams and the ranking minority member of the subcommittee, the Senator from New York (Mr. Javits) have done yeoman work in structuring this landmark bill and bringing it to the Senate floor for consideration. I congratulate them on this momentous achievement in behalf of all Americans. And I wish to thank them for their support of two amendments I offered during committee consideration, which I will describe shortly.

The provisions of S. 2193 have been developed after careful study by the Labor Subcommittee and the full Committee on Labor and Public Welfare of the extensive information presented at the hearings and the recommendations of all interested groups. The bill is a sound and **workable blueprint for action.**

The major provisions of the bill provide for the Secretary of Labor's developing and establishing standards of occupational safety and health to apply to all employment performed in a business affecting commerce among the States. It also provides for enforcement of these standards through a system of inspection, investigation, and reporting.

The bill provides, in section 8(f), that employees—or their representative—may notify the Secretary of Labor or an inspector of any violation or dangerous situation which they believe exists. The notice is to be in writing and the Secretary shall then conduct an inspection of the condition if he determines that there are reasonable grounds to believe the violation or imminent danger exists. I was concerned that an employee might be reluctant to advise inspectors of dangerous conditions if his or her identity were revealed to the employer. The committee adopted my amendment, cosponsored by Senator Nelson, to provide that, upon request, the name of an employee giving such notice may not be published or released. Senator Nelson and I had sponsored a similar amendment to the Coal Mine Health and Safety Act of 1969, Public Law 91-173, section 103(g).

In section 11 of the bill, emergency procedures are made available to the Secretary of Labor or his designee—probably an industrial inspector—to counteract imminent dangers. When a condition or practice exists which may cause death or serious physical harm before it can be corrected, the Secretary—or his designee—is authorized to bring action for a temporary restraining order in the appropriate U.S. district court. If the danger is so immediate that action must be taken before court proceedings can be instituted, the inspector may order the necessary action to be taken, and his order is effective for 72 hours.

Such "red tag" or "stop work" provision are common in State safety laws, and similar authority is contained in both the Coal Mine Health and Safety Act of 1969 and the recently passed Railroad Safety Act. California has the substantial equivalent of these provisions in sections 6510 and 6511 of the California Labor Code.

While I agree that such an emergency procedure is necessary in this bill, I was concerned that the power to close down production operations on so broad a basis should not rest solely with a single inspector. In order to circumvent the potential for unreasonable action, I joined with Senator Schweiker in developing an amendment adopted by the

committee which requires that any inspector delegated this authority must first obtain the concurrence of an appropriate regional Labor Department official before issuing such an order. I believe that this procedure should reduce the potential for abuses in the issuance of imminent-danger orders. At the same time, I wish to make clear that it was not our intent in offering this amendment to provide an administrative loophole whereby an unwieldy or otherwise unworkable concurrence procedure would frustrate the statutory purpose of providing an expeditious emergency closing procedure. Thus, the Secretary of Labor should insure that the concurrence procedure includes ample alternate regional DOL officials with authority to give concurrence by telephone, night or day, workday or weekend.

In this regard, the committee report on the bill, No. 91-1282, explains this concurrence procedure quite thoroughly as follows on page 13:

Section 11(b) specifies that in delegating to an inspector his authority to issue imminent danger orders, the Secretary shall require the inspector to obtain the concurrence of an appropriate regional Labor Department official before such an order is issued. The committee adopted this qualification in order to meet the concern expressed by some that it should not be within the sole judgment of a single inspector to determine whether a hazard is so imminent as to warrant interference with a production operation. The bill now provides that an additional judgment shall be obtained; however, bearing in mind the act's purpose to protect fully employees whose lives and health may be under immediate risk, it is intended that the necessary concurrence may be obtained by telephone consultation rather than more protracted means. In order that difficulties of communication will not thwart the act's purpose by delaying the issuance of an order, it is expected that the Secretary will make suitable provision to insure that persons authorized to provide such concurrence can be reached by telephone at all times.

The bill provides a fair and reasonable enforcement procedure whereby the Secretary of Labor shall issue citations for violations and afford an opportunity for a formal hearing. An enforcement order issued by the Secretary of Labor after a hearing may be reviewed in the appropriate U.S. court of appeals.

Full and adequate information is a fundamental precondition for an effective occupational safety and health program. Under the provisions of the bill, the Secretaries of Labor and of Health, Education, and Welfare will cooperate in developing and instituting adequate statistical programs.

In addition, the bill establishes a National Institute of Occupational Health and Safety within the Department of Health, Education, and Welfare to conduct research, training, and related activities. The establishment of this special institute will provide occupational health and safety research with the visibility and status it merits.

I believe that the bill strikes an appropriate and important balance between Federal and State responsibilities for occupational health and safety enforcement. Under the bill, whenever a State wishes to assume responsibility for developing or enforcing standards, the State may do so if it submits a State plan which the Secretary of Labor determines to provide for at least as effective and rigorous enforcement as the Federal program. Planning grants with up to 90 percent Federal participation and program grants with up to 50 percent Federal participation are authorized to offer States incentives to assume such responsibilities. For example, California may very well decide

to continue and expand its efforts in this field, and will be able to obtain 20 percent of the cost of reorganizing to conform to Federal standards and procedures; and with the 50-percent program grant, it could double its present efforts in occupational health and safety.

During the hearings conducted on occupational health and safety, the committee's attention was drawn to the State workmen's compensation programs. Serious questions about the adequacy of such programs were raised. The bill establishes in section 23 a National Commission on State Workmen's Compensation Laws. The Commission will study and evaluate existing State laws and will report its findings and conclusions to Congress by October 1, 1971.

Mr. President, the problem of death, injury, and disease in industry is national in scope, and the appropriate congressional response is to adopt the comprehensive program contained in S. 2193 to protect the 80 million workers of this Nation and then to insure that this program is adequately funded and effectively administered.

It may be many months before this program makes an impact on those awful statistics of job-related death and injury, but the enactment of this legislation will mark an auspicious and long overdue beginning of our effort. With this program, a safe and healthful work environment can be made a reality for every working man and woman in our Nation. I urge my colleagues to join me in support of this essential legislation.

HEALTH AND SAFETY OF WORKERS IS VITAL TO OUR ECONOMY

Mr. RANDOLPH. Mr. President, within the past 3 years there have been three major disasters in my home State of West Virginia. Each of these horrible events, I believe, served a purpose. The Mannington coal mine disaster which claimed 76 lives awoke the Nation and this Congress to the dangers of mining, and led directly to the passage of the Coal Mine Health and Safety Act. Collapse of the Silver Bridge at Point Pleasant into the Ohio River forced us to take another look at bridge safety standards. And the shocking death of 75 Marshall University athletes, staff members, and supporters in an airplane crash near Huntington has pointed to the need for greater air safety controls.

This bill—S. 2193—is not in response to some sudden disaster, but to the continuing health and safety hazards of our Nation's accelerated industrialization. The 40 workers who die each day, the 6,000 who are injured each 24 hour shift, represent personal tragedies which have not aroused any great public outcry. And yet the 80 million men and women who form the production force of America have a very vital personal stake in passage of the Occupational Safety and Health Act of 1970.

Both industry and labor agree on the need to eliminate job hazards. But there is honest disagreement on how this can best be accomplished. I believe that we have now reached the point of compromise where each side on this vital issue can, with satisfaction, say that it has put forth its best effort.

I support today the concept of direct line responsibility for the administration of safety and health legislation, as was incorporated in the Coal Mine Health and Safety Act. This bill vests full authority with the Secretary of Labor to promulgate occupational safety

and health standards. This gives him both the power to act effectively and the undiffused responsibility for the consequences of his actions in carrying out the provisions of the act.

I commend the distinguished Senator from New Jersey (Mr. Williams) and others on both sides of the aisle who have worked so long and so hard to produce this legislation. I believe that its passage will help stem the collective disaster of death and disablement which have marked our technological progress.

Despite the many disruptive forces in our land today, I feel that our increasing concern for the quality of life and compassion for the individual hold out a bright promise for tomorrow. I endorse the words of H. G. Wells, who wrote:

The past is but the beginning of a beginning, and all that is and has been is but the twilight of the dawn. A day will come when beings who are now latent in our thoughts and hidden in our loins . . . shall laugh and reach out their hands amid the stars.

Mr. HRUSKA. Mr. President, we are desperately in need of legislation to help insure the safety and health of industrial workers. For too long their needs have been inadequately provided for in this respect.

The grim statistics speak for themselves; we cannot afford 14,500 fatalities a year, 2.2 million disabilities. The economic impact is tremendous, but even more horrible is the human suffering of the men and women involved, and of their families and their communities. The situation cries out for solution. It is our strong duty to heed that cry and provide relief in this session of Congress.

But, it is also our duty to provide responsible legislation. The program we authorize must be one that can be administered; it must also be one which provides for due process and is in accord with orderly accustomed practice.

Mr. President, S. 2193 does not meet these criteria. If it is approved in the form in which it was reported, we will not have acted responsibly in this critical matter.

It is my view, Mr. President, that the Senate should have accepted the amendment offered yesterday by Mr. Dominick. That amendment would have allowed us to achieve the objectives we all seek, without the critical faults of S. 2193. It is my hope that the Senate will erase the most important deficiencies of the committee bill.

The major faults of S. 2193 are these:

First. The Secretary of Labor is made responsible for making, promulgating and enforcing health and safety standards. He is required to be at one and the same time, rulemaker, investigator, judge, and jury.

Mr. President, the Secretary of Labor himself recognizes the impropriety of such an arrangement. He does not believe that such a range of responsibility should be vested in an executive department, and has asked for a more reasonable process. The President of the United States does not want this authority totally vested in one of his Cabinet officers, and has indicated his preference for S. 4404, the substance of which was included in the amendment which was before us yesterday.

Second. S. 2193, in my view, violates due process. The bill calls for heavy fines without providing the normal and accepted safeguards common to such penalties. The entire process is an administrative one,

and is only appealable to a judicial or independent body as a last resort. It is important to note that the circuit court of appeals—which hears appeals from the Secretary's decisions—is required to accept the Secretary's findings of fact as conclusive, if they are supported by substantial evidence on the record considered as a whole.

Mr. President, we have available to us a good and proper alternative. It is contained in the Dominick substitute amendment. Instead of making the Secretary of Labor responsible for setting standards, these should be the province of an Occupational and Health Board, composed of specially chosen members competent to handle the complex medical and technical problems involved. The problem involves not only the conventional labor and manpower matters, but requires expertise on the health aspects as well.

Instead of combining legislative, enforcement and judicial functions, the legislation should recognize the essential differences involved and separate them. A National Occupational Safety and Health Board, an independent agency should determine and promulgate appropriate safety rules. This Board, which would consist of five members chosen on the basis of their training and experience, would be better able to determine the safety needs of the various industries. Such a Board would improve the quality of the rules and relieve the Secretary of this duty to both make rules and enforce them. It would greatly improve the bill.

Instead of violating due process of law, the legislation should explicitly recognize its requirements. Under the committee bill, as I have said, the Secretary makes the rules, investigates and prosecutes violations, and is the judge. I believe that these contradictory duties should be changed. An elementary concept demands that these functions be separated. In addition to relieving the Secretary of his rulemaking duties, we should likewise vest the quasi-judicial functions in a separate, and independent agency. The amendment of the Senator from New York, No. 1061, which the Senate adopted today, will accomplish this by creating a separate board of appeals to hear contested cases. This amendment, which I supported, is similar to the provision of the administration substitute, and its adoption substantially improves this legislation.

Mr. President, I said earlier that we desperately need legislation in this area and I hold to that conclusion. The bill, as amended, is now a more acceptable and workable piece of legislation. It is my hope that additional amendment, and revision will occur to make it the really effective and useful instrument it can truly be.

Mr. JAVRS. Mr. President, I shall detain the Senate for only 1 minute. I wish to call to the attention of Senators the very important and significant part of the bill which deals with a study which is going to be made of the workmen's compensation systems in every State. There are tremendous inequities and shortcomings in many—not all—workmen's compensation laws. About one fifth of American workers, by virtue of State laws, are not even covered by workmen's compensation.

I know how nearly everyone feels about a Federal workmen's compensation system, which is all the more reason why there should be a much greater degree of adequacy among the States.

I rise for two purposes. First, I hope Senators will be stimulated by this provision to look into their own State compensation systems, which are about to be surveyed if this bill goes through, which I hope it will; and second, I hope Senators will use their influence, and the influence of Senators is very considerable, to bring about reform in their State systems, especially as we will be seeing the total picture of the relative inequalities between the various States concerning injustices to injured workers, which I do not think any Senator would regard with sympathy. So I hope this provision, which could be one of the most significant parts of the bill, will have the interested concern of Senators which it well deserves.

I thank the Senator.

Mr. SAXBE. Mr. President, before voting on this bill I would like to call attention to the fact that this does not take away forever the power of the States to regulate their health and safety. This was one of the original concerns and the reasons for a great deal of opposition, because this is a new field that the Federal Government is moving into, which heretofore has been a province of the States.

The bill does contemplate, however, that the States can regain their control over their domestic health and safety. I call this to the attention of Senators so that States will move to do this and reassert under the provision of this law their ability to police the industrial health and safety in their States.

Mr. DOMINICK. Mr. President, before we vote on this matter I want to point out once again the enormous scope of the bill.

For the first time, in modern history, at least, the Federal Government is taking over the role of monitor of the health and safety functions in almost every business we can think of throughout the country.

As the Senator from Ohio so aptly said, there is a provision in the bill which will permit the States to regain some administrative control, but I do not think we should be under any illusion. The Federal Government is going to be setting standards for safety and the health criteria for all industries and businesses, whether it be nurses working in hospitals, bus conductors, railway firemen, stevedores, department store employees, or whatever it may be. So we are dealing with something which is of tremendous significance in its impact on businesses and employees throughout the country. Hopefully, it will work, and, hopefully, it will bring about better health and safety conditions throughout the country.

I suppose we must say that we cannot know until we have tried it. There is a provision in the bill which recognizes the impact that this particular legislation may have on small businesses. It is found in section 24, on page 90 of the bill. It permits the Secretary to make loans to small businesses wherever the standards that are set by the National Government are so severe as to have caused a real and substantial economic injury. Under those circumstances the Secretary is entitled, through the Small Business Administration, to make loans to those businesses to get them over the hump, because of the need for new equipment, or because of new conditions within the shop, which would permit them to continue in operation.

I think that is a very significant and important provision for minimizing economic injury which could occur if the bill resulted in situations which would have very serious effects on businesses.

Let me give just an example of this. In the Minerals and Non-metallic Mines Safety Act as it originally passed this body, we had a provision that every mine had to have sanitary conditions—showers, running water, and many other conditions—which are just fine in big mines. There is no reason why they should not have them. But to impose such conditions on a father and son mine would run it out of business, right off the bat. It does not make any difference whether we are talking about West Virginia, Colorado, or any other State. They would just plain be out of business.

This provision in the bill would at least ameliorate some of those circumstances and the economic injury that could theoretically be caused by putting men out of work. What we are trying to do is put people to work, rather than put them out of work.

Although I have considerable misgivings about the bill and certain provisions in it, although I think a board should be provided for, although I think we should have a few other changes in the bill, I think there is a possibility that it may become a workable bill after a conference with the House, when the House gets around to acting on it. So I shall support it, even though I have reservations.

Mr. JAVIER. Mr. President, this has been such a monumental labor that I think tributes to be received by those who have labored so hard should not be lost in the flurry which so often occurs after a bill is passed.

I think the Senator from New Jersey (Mr. Williams) has given a fine and constructive effort in trying to get this kind of bill enacted into law, and certainly is entitled to the plaudits of the Senate in respect of his conduct as manager of the bill.

I believe that the Senator from Colorado (Mr. Dominick) deserves thanks for his extraordinary diligence in this matter. Although he did not succeed in many of the suggestions he had to offer, his efforts had a vital impact on the bill in terms of principle and fairness, both in committee and on the Senate floor, and I would like to pay tribute to him.

The Senator from Ohio (Mr. Saxton) and the Senator from Pennsylvania (Mr. Schweiker) also rendered yeoman service in their interest and in the contributions which they made in amending the bill.

Aside from Senators, whose duty it is to do it, there are unsung heroes in getting passed a bill as difficult and as complex as this one.

Frederick Blackwell, who is counsel to this particular subcommittee, which the Senator from New Jersey chaired, has rendered yeoman service.

So has Robert Nagle, who has accompanied the manager of the bill on the floor and helped him follow it through. Donald Elisburg of the subcommittee staff has also been most helpful.

So has Richard Wise, who assisted the Senator from Colorado (Mr. Dominick).

So has Eugene Mittleman, who is minority counsel on the committee, and who assisted me.

I hope very much that they will get some satisfaction from a job well done. They certainly played an important part in getting the bill through.

Mr. WILLIAMS of New Jersey. Mr. President, I appreciate the generosity and the thoughtfulness of the statement just made by the Senator from New York reflecting on the work of so many people that went into this major legislation.

The efforts here today on behalf of 80 million American workers is truly one of the most significant achievements of this Congress. I do want to reflect on the extremely valuable contributions of my colleagues on both sides of the aisle without whose cooperation and strong efforts there would be no bill.

Every member of the Subcommittee on Labor and the Committee on Labor and Public Welfare has made a contribution. Particularly, I must thank Senator Javits, the ranking minority member of the committee, for his tireless efforts on behalf of the bill in committee and on the floor. Many of the improvements in the committee bill were included at his request.

The guidance and wise counsel of the chairman of the committee, Senator Yarborough, and the ranking member, Senator Randolph, and Senators Cranston, Schweiker, and Saxbe, was invaluable to the enactment of this bill. I must also commend the able Senator from Colorado, Mr. Dominick. While we disagreed on a number of fundamental features of the bill, I know he shares my concern with the need for adequate health and safety standards for the workplace, and I appreciate the manner in which he has so ably presented his views.

Finally, a word of appreciation for the work of the staff. Besides the Labor Subcommittee staff members, Fred Blackwell, Robert Nagle, and Donald Elisburg, special note should be made of the contributions of the minority staff members, Gene Mittleman, Peter Benedict, Richard Wise, and Michael Gertner.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. Bayh), the Senator from Nevada (Mr. Bible), the Senator from Connecticut (Mr. Dodd), the Senator from South Carolina (Mr. Hollings), the Senator from Georgia (Mr. Russell), the Senator from Alabama (Mr. Sparkman), and the Senator from Maryland (Mr. Tydings) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. Ellender) is absent on official business.

I further announce that, if present and voting, the Senator from Nevada (Mr. Bible) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. Fong) is necessarily absent.

The Senator from Kentucky (Mr. Cooper), the Senator from Florida (Mr. Gurney), the Senator from Illinois (Mr. Percy), and the Senator from Maine (Mrs. Smith) are absent on official business. of illness.

The Senator from South Dakota (Mr. Mundt) is absent because

If present and voting, the Senator from South Dakota (Mr. Mundt), the Senator from Kentucky (Mr. Cooper), and the Senator from Maine (Mrs. Smith) would each vote "yea."

On this vote, the Senator from Illinois (Mr. Percy) is paired with the Senator from Florida (Mr. Gurney). If present and voting, the Senator from Illinois would vote "yea" and the Senator from Florida would vote "nay."

The result was announced—yeas 83, nays 3, as follows:

[No. 384 Leg.]

YEAS—83

Aiken	Griffin	Moss
Allen	Hansen	Murphy
Allott	Harris	Muskie
Anderson	Hart	Nelsen
Baker	Hartke	Packwood
Bellmon	Hatfield	Pastore
Bennett	Holland	Pearson
Boggs	Hruska	Pell
Brooke	Hughes	Prouty
Burdick	Inouye	Proxmire
Byrd, Va.	Jackson	Randolph
Byrd, W. Va.	Javits	Ribicoff
Cannon	Jordan, N.C.	Saxbe
Case	Jordan, Idaho	Schweiker
Church	Kennedy	Scott
Cook	Long	Spong
Cotton	Magnuson	Stennis
Cranston	Mansfield	Stevens
Curtis	Mathias	Stevenson
Dole	McCarthy	Symington
Dominick	McClellan	Talmadge
Eagleton	McGee	Tower
Fannin	McGovern	Williams, N.J.
Fulbright	McIntyre	Williams, Del.
Goldwater	Metcalf	Yarborough
Goodell	Miller	Young, N. Dak.
Gore	Mondale	Young, Ohio
Gravel	Montoya	

NAYS—3

Eastland	Ervin	Thurmond
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NOT VOTING—14

Bayh	Fong	Russell
Bible	Gurney	Smith
Cooper	Hollings	Sparkman
Fodd	Mandt	Tydings
Ellender	Percy	

So the bill (S. 2193) was passed, as follows:

S. 2193

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 1970

Ordered to be printed as passed

AN ACT

To authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Occupational Safety and
4 Health Act of 1970".

5 CONGRESSIONAL FINDINGS AND PURPOSE

6 SEC. 2. (a) The Congress finds that personal injuries
7 and illnesses arising out of work situations which result in

1 death or disability impose a substantial burden upon, and
2 are a hindrance to, interstate commerce in terms of reduced
3 production, wage losses, medical expenses, and disability
4 compensation payments.

5 (b) The Congress declares that it is the policy of the
6 United States in the exercise of its powers to regulate com-
7 merce and to provide for the general welfare, to assure so
8 far as possible every working man and woman in the Nation
9 safe and healthful working conditions—

10 (1) by providing for the development, promulga-
11 tion, and effective enforcement of occupational safety and
12 health standards applicable to businesses affecting com-
13 merce;

14 (2) by providing for research relating to occupa-
15 tional safety and health;

16 (3) by providing for training programs to increase
17 and improve the skills of personnel engaged in the field
18 of occupational safety and health;

19 (4) by more clearly delineating the responsibilities
20 of the Federal Government and the States in their ac-
21 tivities related to occupational safety and health;

22 (5) by providing grants to the States to assist them
23 in identifying their needs and responsibilities in the
24 area of occupational safety and health, to develop plans
25 in accordance with the provisions of this Act, and to

1 conduct experimental and demonstration projects in con-
2 nection therewith; and

3 (6) by providing for appropriate accident and
4 health reporting procedures which will more accurately
5 describe the nature of the problems in the field of oc-
6 cupational safety and health and achieve the objectives
7 of this Act.

8 DEFINITIONS

9 SEC. 3. For the purposes of this Act—

10 (a) The term "Secretary" means the Secretary of La-
11 bor or his authorized representative.

12 (b) The term "commerce" means trade, traffic, com-
13 merce, transportation, or communication among the several
14 States; or between a State and any place outside thereof; or
15 within the District of Columbia, or a possession of the United
16 States; or between points in the same State but through a
17 point outside thereof.

18 (c) The term "person" means one or more individuals,
19 partnerships, associations, corporations, business trusts, legal
20 representatives, or any organized group of persons.

21 (d) The term "employer" means a person engaged in
22 a business affecting commerce who has employees, but does
23 not include the United States or any State or political sub-
24 division of a State.

25 (e) The term "employee" means an employee of an

1 employer who is employed in a business of his employer
2 which affects commerce.

3 (f) The term "occupational safety and health stand-
4 ard" means a standard which requires conditions, or the
5 adoption or use of one or more practices, means, methods,
6 operations, or processes, reasonably necessary or appropriate
7 to provide safe or healthful employment and places of
8 employment.

9 (g) The term "national consensus standard" means any
10 occupational safety and health standard or modification
11 thereof which (1) has been adopted and promulgated by a
12 nationally recognized standards-producing organization un-
13 der procedures whereby it can be determined by the Secre-
14 tary that persons interested and affected by the scope or pro-
15 visions of the standard have reached substantial agreement
16 on its adoption, (2) was formulated in a manner which
17 afforded an opportunity for diverse views to be considered
18 and (3) has been designated as such a standard by the Sec-
19 retary, after consultation with other appropriate Federal
20 agencies.

21 (h) The term "established Federal standard" means
22 any operative occupational safety and health standard estab-
23 lished by any agency of the United States and presently
24 in effect, or contained in any Act of Congress in force on the
25 date of enactment of this Act.

APPLICABILITY OF THIS ACT

SEC. 4. (a) This Act shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no Federal district courts having jurisdiction.

(b) (1) Except as provided in paragraph (2) of this subsection, nothing in this Act shall be deemed to repeal or modify any other Federal law prescribing safety or health requirements or the standards, rules, or regulations promulgated pursuant to such law, nor shall this Act apply to working conditions of employees with respect to which any Federal agency other than the Secretary of Labor exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-

6

1 742. Act of August 23, 1958 (33 U.S.C. 941), and the
2 National Foundation on Arts and Humanities Act (20
3 U.S.C. 951 et seq.) are superseded on the effective date of
4 corresponding standards, promulgated under this Act, which
5 are determined by the Secretary to be more effective. Stand-
6 ards issued under the laws listed in this paragraph and in
7 effect on or after the effective date of this Act shall be deemed
8 to be occupational safety and health standards issued under
9 this Act.

10 (3) The Secretary shall, within three years after the
11 effective date of this Act, report to the Congress his recom-
12 mendations for legislation to avoid unnecessary duplication
13 and to achieve coordination between this Act and other
14 Federal laws relating to occupational safety and health.

15 (4) Nothing in this Act shall be construed to super-
16 sede or in any manner affect any workmen's compensation
17 law or to enlarge or diminish or affect in any other manner
18 the common law or statutory rights, duties, or liabilities of
19 employers and employees under any law with respect to
20 injuries, diseases, or death of employees arising out of, or in
21 the course of, employment.

22 **DUTIES OF EMPLOYERS AND EMPLOYEES**

23 **SEC. 5. (a) Each employer—**

24 (1) shall furnish to each of his employees employ-
25 ment and a place of employment free from recognized

1 hazards so as to provide safe and healthful working
2 conditions, and

3 (2) shall, except as provided in section 17, comply
4 with occupational safety and health standards, and all
5 rules, regulations, and orders issued pursuant to this Act.

6 (b) Each employee shall, except as provided in section
7 17, comply with occupational safety and health standards
8 and all rules, regulations, and orders issued pursuant to this
9 Act which are applicable to his own actions and conduct.

10 OCCUPATIONAL SAFETY AND HEALTH STANDARDS

11 SEC. 6. (a) Without regard to chapter 5 of title 5,
12 United States Code, or to the other subsections of this section,
13 the Secretary shall, as soon as practicable during the period
14 beginning with the effective date of this Act and ending two
15 years after such date, by rule promulgate as an occupational
16 safety or health standard any national consensus standard,
17 and any established Federal standard, unless he determines
18 that the promulgation of such a standard would not result in
19 improved safety or health for specifically designated em-
20 ployees. In the event of conflict among any such standards,
21 the Secretary shall promulgate the standard which assures the
22 greatest protection of the safety or health of the affected em-
23 ployees. During such period he may also by rule, and in ac-
24 cordance with section 553 of title 5, United States Code,
25 promulgate any standard adopted prior to the date of enact-

1 ment of this Act by a nationally recognized standards-
2 producing organization by other than a consensus method.

3 (b) The Secretary may by rule promulgate, modify, or
4 revoke any occupational safety or health standard in the
5 following manner:

6 (1) Whenever the Secretary, upon the basis of infor-
7 mation submitted to him in writing by an interested person,
8 a representative of any organization of employers or em-
9 ployees, a nationally recognized standards-producing organi-
10 zation, the Secretary of Health, Education, and Welfare, the
11 National Institute for Occupational Health and Safety, a
12 State or political subdivision, or on the basis of information
13 developed by the Secretary or otherwise available to him,
14 determines that a rule should be promulgated in order to
15 serve the objectives of this Act, the Secretary may request
16 the recommendations of an advisory committee appointed un-
17 der section 7 of this Act. The Secretary shall provide such an
18 advisory committee with any proposals of his own or of the
19 Secretary of Health, Education, and Welfare, together with
20 all pertinent factual information developed by the Secretary
21 or the Secretary of Health, Education, and Welfare, or
22 otherwise available, including research, demonstrations, and
23 experiments. An advisory committee shall submit to the Sec-
24 retary its recommendations regarding the rule to be promul-
25 gated within ninety days from the date of its appointment or

1 within such longer or shorter period as may be prescribed by
2 the Secretary, but in no event for a period which is longer
3 than two hundred and seventy days.

4 (2) The Secretary shall publish a proposed rule pro-
5 mulgating, modifying, or revoking an occupational safety or
6 health standard in the Federal Register and shall afford in-
7 terested persons a period of thirty days after publication to
8 submit written data or comments. Where an advisory com-
9 mittee is appointed and the Secretary determines that a rule
10 should be issued, he shall publish the proposed rule within
11 sixty days after the submission of the advisory committee's
12 recommendations or the expiration of the period prescribed
13 by the Secretary for such submission.

14 (3) On or before the last day of the period provided for
15 the submission of written data or comments under paragraph
16 (2), any interested person may file with the Secretary
17 written objections to the proposed rule, stating the grounds
18 therefor and requesting a public hearing on such objections.
19 Within thirty days after the last day for filing such objec-
20 tions, the Secretary shall publish in the Federal Register a
21 notice specifying the occupational safety or health standard
22 to which objections have been filed and a hearing requested,
23 and specifying a time and place for such hearing.

24 (4) Within sixty days after the expiration of the period

1 provided for the submission of written data or comments un-
2 der paragraph (2), or within sixty days after the completion
3 of any hearing held under paragraph (3), the Secretary
4 shall issue a rule promulgating, modifying, or revoking an
5 occupational safety or health standard or make a determina-
6 tion that a rule should not be issued. Such a rule may contain
7 a provision delaying its effective date for such period as the
8 Secretary determines may be necessary to insure that affected
9 employers and employees will be informed of the existence
10 of the standard and of its terms and that employers affected
11 are given an opportunity to familiarize themselves and their
12 employees with the existence of the requirements of the
13 standard.

14 (5) The Secretary, in promulgating standards dealing
15 with toxic materials or harmful physical agents under this
16 subsection, shall set the standard which most adequately
17 assures, to the extent feasible, on the basis of the best avail-
18 able evidence, that no employee will suffer material impair-
19 ment of health or functional capacity even if such employee
20 has regular exposure to the hazard dealt with by such
21 standard for the period of his working life. Development of
22 standards under this subsection shall be based upon research,
23 demonstrations, experiments, and such other information as
24 may be appropriate. In addition to the attainment of the
25 highest degree of health and safety protection for the em-

1 ployee, other considerations shall be the latest available scien-
2 tific data in the field, the feasibility of the standards, and
3 experience gained under this and other health and safety laws.
4 Whenever practicable, the standard promulgated shall be
5 expressed in terms of objective criteria and of ~~the~~ perform-
6 ance desired.

7 (6) Any standard promulgated under this subsection
8 shall prescribe the use of labels or other appropriate forms
9 of warning as are necessary to insure that employees are
10 apprised of all hazards to which they are exposed, rele-
11 vant symptoms and appropriate emergency treatment, and
12 proper conditions and precautions of safe use or exposure.
13 Where appropriate, such standard shall also prescribe suit-
14 able protective equipment and control or technological pro-
15 cedures to be used in connection with such hazards and shall
16 provide for monitoring or measuring employee exposure
17 at such locations and intervals, and in such manner as may
18 be necessary for the protection of employees. In addition,
19 where appropriate, any such standard shall prescribe the
20 type and frequency of medical examinations or other tests
21 which shall be made available, by the employer or at his
22 cost, to employees exposed to such hazards in order to most
23 effectively determine whether the health of such employees
24 is adversely affected by such exposure. In the event such
25 medical examinations are in the nature of research, as

1 determined by the Secretary of Health, Education, and Wel-
2 fare, such examinations may be furnished at the expense of
3 the Secretary of Health, Education, and Welfare. The results
4 of such examinations or tests shall be furnished only to the
5 Secretary or the Secretary of Health, Education, and Wel-
6 fare, and, at the request of the employee, to his physician.
7 The Secretary, in consultation with the Secretary of Health,
8 Education, and Welfare may by rule promulgated pursuant
9 to section 553 of title 5, United States Code, make appro-
10 priate modifications in the foregoing requirements relating to
11 the use of labels or other forms of warning, monitoring or
12 measuring, and medical examinations, as may be warranted
13 by experience, information, or medical or technological devel-
14 opments acquired subsequent to the promulgation of the rele-
15 vant standard.

16 (7) Whenever a rule promulgated by the Secretary
17 differs substantially from an existing national consensus
18 standard, the Secretary shall publish in the Federal Register
19 a statement of the reasons why the rule as adopted will better
20 effectuate the purposes of this Act than the national con-
21 sensus standard.

22 (c) (1) The Secretary shall provide without regard to
23 the requirements of chapter 5, title 5, United States Code, for
24 an emergency temporary standard to take immediate effect
25 upon publication in the Federal Register if he determines

1 (A) that employees are exposed to grave danger from ex-
2 posure to substances or agents determined to be toxic or
3 physically harmful or from new hazards, and (B) that such
4 emergency standard is necessary to protect employees from
5 such danger.

6 (2) Such standard shall be effective until superseded by
7 a standard promulgated in accordance with the procedures
8 prescribed in paragraph (3) of this subsection.

9 (3) Upon publication of such standard in the Federal
10 Register the Secretary shall commence a proceeding in ac-
11 cordance with section 6 (b) of this Act, and the standard as
12 published shall also serve as a proposed rule for the proceed-
13 ing. The Secretary shall promulgate a standard under this
14 paragraph no later than six months after publication of the
15 emergency standard as provided in paragraph (2) of this
16 subsection.

17 (d) Any affected employer may apply to the Secretary
18 for a rule or order for a variance from a standard promul-
19 gated under this section. Affected employees shall be given
20 notice of each such application and an opportunity to partici-
21 pate in a hearing. The Secretary shall issue such rule or
22 order if he determines on the record, after opportunity for
23 an inspection where appropriate and a hearing, that the
24 proponent of the variance has demonstrated by a preponder-
25 ance of the evidence that the conditions, practices, means,

1 methods, operations, or processes used or proposed to be used
2 by an employer will provide employment and places of em-
3 ployment to his employees which are as safe and healthful as
4 those which would prevail if he complied with the standard.
5 The rule or order so issued shall prescribe the conditions the
6 employer must maintain, and the practices, means, methods,
7 operations, and processes which he must adopt and utilize to
8 the extent they differ from the standard in question. Such a
9 rule or order may be modified or revoked upon application
10 by an employer, employees, or by the Secretary on his own
11 motion, in the manner prescribed for its issuance under this
12 subsection at any time after six months from its issuance.

13 (e) Whenever the Secretary promulgates any standard,
14 makes any rule, order or decision, grants any exemption or
15 extension of time, or compromises, mitigates, or settles any
16 penalty assessed under this Act, he shall include a statement
17 of the reasons for such action which shall be published in
18 the Federal Register.

19 (f) Any person who may be adversely affected by a
20 standard issued under this section may at any time prior
21 to the sixtieth day after such standard is promulgated file a
22 petition challenging the validity of such standard with the
23 United States court of appeals for the circuit wherein such
24 person resides or has his principal place of business, for a
25 judicial review of such standard. A copy of the petition

1 shall be forthwith transmitted by the clerk of the court to
2 the Secretary. The filing of such petition shall not, unless oth-
3 erwise ordered by the court, operate as a stay of the standard.

4 (g) In determining the priority for establishing stand-
5 ards under this section, the Secretary shall give due regard to
6 the urgency of the need for mandatory safety and health
7 standards for particular industries, trades, crafts, occupations,
8 businesses, workplaces or work environments. The Secretary
9 shall also give due regard to the recommendations of the
10 Secretary of Health, Education, and Welfare regarding the
11 need for mandatory standards in determining the priority
12 for establishing such standards.

13 ADMINISTRATION; ADVISORY COMMITTEES

14 SEC. 7. (a) In carrying out his responsibilities under
15 this Act, the Secretary is authorized to—

16 (1) use, with the consent of any Federal agency,
17 the services, facilities, and personnel of such agency,
18 with or without reimbursement, and with the consent of
19 any State or political subdivision thereof, accept and
20 use the services, facilities, and personnel of any agency
21 of such State or subdivision with reimbursement; and

22 (2) employ experts and consultants or organiza-
23 tions thereof as authorized by section 3109 of title 5,
24 United States Code, except that contracts for such
25 employment may be renewed annually.

(b) The Secretary may appoint advisory committees to recommend occupational safety and health standards under section 6 (b) of this Act. Each such advisory committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare and may include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States, and such other persons who are qualified by knowledge and experience to make a useful contribution to the work of the committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards producing organizations, but the number of persons so appointed to any advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated at a rate prescribed by the Secretary not in excess of the daily rate prescribed for GS-18 under section 5332 of title 5, United States Code. All members of advisory committees shall be reimbursed for

1 travel, subsistence, and necessary expenses incurred in the
2 performance of their duties. The Secretary shall pay to any
3 State which is the employer of a member of the committee
4 who is a representative of the health or safety agency of that
5 State, a reimbursement sufficient to cover the actual cost to
6 the State resulting from the service of such representative
7 on the committee. No member of the committee (other than
8 representatives of employers and employees) shall have an
9 economic interest in any proposed rule.

10 (c) (1) The Secretary and the Secretary of Health,
11 Education, and Welfare shall appoint a National Advisory
12 Committee on Occupational Safety and Health (hereafter in
13 this subsection referred to as the "Committee"). The Com-
14 mittee shall consist of twenty members appointed without
15 regard to the provisions of title 5, United States Code, gov-
16 erning appointments in the competitive service and composed
17 equally of representatives of management, labor, occupational
18 safety and occupational health professions, and of the public.
19 The Secretary shall appoint all members of the Committee
20 except for occupational health representatives who shall be
21 appointed by the Secretary of Health, Education, and Wel-
22 fare. The Secretary shall designate one of the public members
23 as Chairman. The members shall be selected upon the basis of
24 their experience and competence in the field of occupational
25 safety and health.

1 (2) The Committee shall advise, consult with, and
2 make recommendations to, the Secretaries of Labor and
3 Health, Education, and Welfare on matters relating to the
4 implementation of this Act. The Committee shall hold no
5 fewer than two meetings during each calendar year. All
6 meetings of the Committee shall be open to the public and a
7 transcript shall be kept and made available for public
8 inspection.

9 (3) The members of the Committee appointed from pri-
10 vate life shall be compensated at a rate prescribed by the
11 Secretary not in excess of the daily rate prescribed for GS-18
12 under section 5332 of title 5, United States Code. All mem-
13 bers of the Committee shall be reimbursed for travel, subsist-
14 ence, and necessary expenses in the performance of their
15 duties.

16 (4) The Secretary shall furnish to the Committee an
17 executive secretary and such secretarial, clerical, and other
18 services as are deemed necessary to the conduct of its
19 business.

20 INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

21 SEC. 8. (a) In order to carry out the purposes of this
22 Act, the Secretary, or any authorized representative, upon
23 presenting appropriate credentials to the owner, operator, or
24 agent in charge, is authorized—

25 (1) to enter upon at reasonable times any place of

1 employment where work is performed to which this Act
2 applies; and

3 (2) to inspect and investigate during regular work-
4 ing hours and at other reasonable times, and within rea-
5 sonable limits and in a reasonable manner, any such place
6 of employment and all pertinent conditions, structures,
7 machines, apparatus, devices, equipment, and materials
8 therein, and to question privately any such employer,
9 owner, operator, agent or employee.

10 (b) For the purposes of any investigation or proceeding
11 provided for in this Act, the provisions of sections 9 and 10
12 (relating to the attendance of witnesses and the production
13 of books, papers, and documents) of the Federal Trade Com-
14 mission Act of September 16, 1914 (15 U.S.C. 49, 50), are
15 hereby made applicable to the jurisdiction, powers, and duties
16 of the Secretary or any officers designated by him.

17 (c) (1) Each employer shall make, keep and preserve,
18 and make available to the Secretary or the Secretary of
19 Health, Education, and Welfare, such records regarding his
20 activities relating to this Act as the Secretary, in cooperation
21 with the Secretary of Health, Education, and Welfare, may
22 prescribe by regulation as necessary or appropriate for the
23 enforcement of this Act or for developing information re-
24 garding the causes and prevention of occupational accidents
25 and illnesses. Such regulations may include provisions re-

1 quiring employers to conduct periodic inspections to deter-
2 mine their own state of compliance with this Act or with
3 applicable standards, regulations, and orders, and to certify
4 the results of such inspections to the Secretary. The Secre-
5 tary shall also issue regulations requiring that employers,
6 through posting of notices or other appropriate means, keep
7 their employees informed of their protections and obliga-
8 tions under this Act, including the provisions of applicable
9 standards.

10 (2) The Secretary, in cooperation with the Secretary of
11 Health, Education, and Welfare, shall prescribe regulations
12 requiring employers to maintain accurate records of, and to
13 make periodic reports on, all work-related deaths, injuries and
14 illnesses. The Secretary shall compile accurate statistics on
15 work injuries and illnesses which shall include all disabling,
16 serious, or significant injuries and illnesses, whether or not
17 involving loss of time from work.

18 (3) The Secretary, in cooperation with the Secretary
19 of Health, Education, and Welfare shall issue regulations re-
20 quiring employers to maintain accurate records of employee
21 exposures to potentially toxic materials or harmful physical
22 agents which are required to be monitored or measured
23 under section 6 or 19. Such regulations shall provide em-
24 ployees or their representatives with an opportunity to ob-
25 serve such monitoring or measuring, and to have access to

1 the records thereof. Such regulations shall also make ap-
2 propriate provision for each employee or former employee
3 to have access to such records as will indicate his own ex-
4 posure to potentially toxic materials or harmful physical
5 agents. Each employer shall promptly notify any employee
6 who has been or is being exposed to toxic materials or harm-
7 ful physical agents in concentrations or at levels which ex-
8 ceed those prescribed by an applicable occupational safety
9 and health standard promulgated under section 6, and shall
10 inform any employee who is being thus exposed of the correc-
11 tive action being taken.

12 (d) Any information required by the Secretary or
13 the Secretary of Health, Education, and Welfare, under
14 this Act shall be obtained with a minimum burden upon
15 employers, especially those operating small businesses. To
16 the maximum extent possible, unnecessary duplication of
17 efforts by employers in recording or reporting information
18 shall be reduced.

19 (e) Subject to regulations issued by the Secretary, a
20 representative of the employer and a representative author-
21 ized by his employees shall be given an opportunity to
22 accompany the Secretary or his authorized representative
23 during the physical inspection of any workplace under sub-
24 section (a) for the purpose of aiding such inspection. Where
25 there is no authorized employee representative the Secretary

1 or his authorized representative shall consult with a reason-
2 able number of employees concerning matters of health and
3 safety in the workplace.

4 (f) (1) Any employees or representative of employees
5 who believe that a violation of a safety or health standard
6 exists that threatens physical harm, or that an imminent
7 danger exists, may request an inspection by giving notice to
8 the Secretary or his authorized representative of such viola-
9 tion or danger. Any such notice shall be reduced to writing,
10 shall set forth with reasonable particularity the grounds for
11 the notice, and shall be signed by the employees or repre-
12 sentative of employees, except that, upon the request of the
13 person giving such notice, his name and the names of individ-
14 ual employees referred to therein shall not appear on any
15 record published, released, or made available pursuant to
16 subsection (g) of this section. If upon receipt of such noti-
17 fication the Secretary determines there are reasonable
18 grounds to believe that such violation or danger exists, he
19 shall make a special inspection in accordance with the pro-
20 visions of this section as soon as practicable, to determine if
21 such violations or danger exist. If the Secretary determines
22 there are no reasonable grounds to believe that a violation or
23 danger exists he shall notify in writing the employees or
24 representative of the employees of such determination.

25 (2) Prior to or during any inspection of a workplace,

1 any employees or representative of employees employed in
2 such workplace may notify the Secretary or any representa-
3 tive of the Secretary responsible for conducting the inspection,
4 in writing, of any violation of this Act which they have
5 reason to believe exists in such workplace. The Secretary
6 shall, after the completion of the inspection, furnish any such
7 employees or representative with a written explanation of
8 any failure to issue a citation with respect to any such
9 alleged violation. The Secretary shall also, by regulation,
10 establish procedures for informal review of any refusal by
11 a representative of the Secretary to issue a citation with
12 respect to any such violation and shall furnish the employees
13 or representative of employees requesting such review a writ-
14 ten statement of the reasons for the Secretary's final disposi-
15 tion of the case.

16 (g) The Secretary or Secretary of Health, Education,
17 and Welfare is authorized to compile, analyze, and publish,
18 either in summary or detailed form, all reports or informa-
19 tion obtained under this section.

20 CITATIONS FOR VIOLATIONS

21 SEC. 9. (a) If, upon inspection or investigation, the
22 Secretary or his authorized representative determines that
23 an employer has violated a requirement of sections 5, 6 (d),
24 8 (c), 19, or a rule, regulation, or order prescribed pursuant
25 to one of those sections, he shall issue forthwith a citation to

1 the employer. Each citation shall be in writing, and shall
2 describe with particularity the nature of the violation, includ-
3 ing a reference to the provision of the Act, rule, regulation,
4 or order alleged to have been violated. In addition, the cita-
5 tion shall fix a reasonable time for the abatement of the viola-
6 tion. The Secretary may prescribe procedures for the issuance
7 of a notice in lieu of a citation with respect to de minimus
8 violations which have no direct or immediate relationship
9 to safety or health.

10 (b) Each citation issued under this section, or a copy
11 or copies thereof, shall be prominently posted, as prescribed
12 in regulations issued by the Secretary, at or near each place
13 a violation referred to in the citation occurred.

14 PROCEDURE FOR ENFORCEMENT

15 SEC. 10. (a) If, after an inspection or investigation,
16 the Secretary issues a citation under section 9(a), he shall,
17 within a reasonable time after the termination of such inspec-
18 tion or investigation, notify the employer by certified mail of
19 the penalty, if any, proposed to be assessed under section 14
20 and that the employer has fifteen working days within which
21 to notify the Secretary that he wishes to contest the citation
22 or proposed assessment of penalty. If, within fifteen working
23 days from the receipt of the notice issued by the Secretary
24 the employer fails to notify the Secretary that he intends to
25 contest the citation or proposed assessment of penalty, and

1 no notice is filed by any employee or representative of em-
2 ployees under subsection (c) within such time the citation
3 and the assessment, as proposed, shall be deemed as final
4 order of the Commission and not subject to review by any
5 court or agency, except upon request of an employee or
6 representative of employees pursuant to subsection (c).

7 (b) If the Secretary has reason to believe that an
8 employer has failed to correct a violation for which a cita-
9 tion has been issued within the period permitted for its cor-
10 rection (which period shall not begin to run until the entry
11 of a final order by the Commission in the case of any review
12 proceedings under this section initiated by the employer in
13 good faith and not solely for delay or avoidance of penal-
14 ties), or has failed to comply with an order issued under
15 section 12 (b), the Secretary shall notify the employer by
16 certified mail of such failure and of the penalty proposed to
17 be assessed under section 15 by reason of such failure, and
18 that the employer has fifteen working days within which to
19 notify the Secretary that he wishes to contest the Secretary's
20 notification or the proposed assessment of penalty. If, within
21 fifteen working days from the receipt of notification issued
22 by the Secretary, the employer fails to notify the Secretary
23 that he intends to contest the notification or proposed assess-
24 ment of penalty, the notification and assessment, as proposed,

1 shall be deemed a final order of the Commission and not
2 subject to review by any court or agency.

3 (c) If an employer notifies the Secretary that he intends
4 to contest a citation issued under section 9 (a) or notification
5 issued under section 10 (a) or (b), or if, within fifteen work-
6 ing days of the issuance of a citation under section 9 (a), any
7 employee or representative of employees files a notice with
8 the Secretary alleging that the period of time fixed in the
9 citation for the abatement of the violation is unreasonable,
10 the Secretary shall immediately advise the Commission of
11 such notification or determination, and the Commission shall
12 afford an opportunity for a hearing (in accordance with sec-
13 tion 554 of title 5, United States Code, but without regard
14 to subsection (a) (3) of such section). The Commission
15 shall thereafter issue an order, based on findings of fact,
16 affirming, modifying, or vacating the Secretary's citation or
17 proposed penalty, or directing other appropriate relief, and
18 such order shall become final fifteen days after its issuance.
19 The rules of procedure prescribed by the Commission shall
20 provide affected employees or representatives of affected
21 employees an opportunity to participate as parties to hear-
22 ings under this subsection.

23 (d) Any person adversely affected or aggrieved by an
24 order of the Commission issued under subsection (c) or
25 (f) may obtain a review of such order in any United States

1 court of appeals for the circuit in which the violation is alleged
2 to have occurred or where the employer has its principal
3 office, or in the Court of Appeals for the District of Columbia
4 Circuit, by filing in such court within sixty days following the
5 issuance of such order a written petition praying that the
6 order be modified or set aside. A copy of such petition shall
7 be forthwith transmitted by the clerk of the court to the
8 Commission and to the other parties, and thereupon the
9 Commission shall file in the court the record in the pro-
10 ceeding as provided in section 2112 of title 28, United
11 States Code. Upon such filing, the court shall have jurisdic-
12 tion of the proceeding and of the question determined therein,
13 and shall have power to grant such temporary relief or
14 restraining order as it deems just and proper, and to make
15 and enter upon the pleadings, testimony, and proceedings
16 set forth in such record a decree affirming, modifying, or
17 setting aside in whole or in part, the order of the Commis-
18 sion and enforcing the same to the extent that such order
19 is affirmed or modified. The commencement of proceedings
20 under this subsection shall not, unless ordered by the court,
21 operate as a stay of the order of the Commission. No objec-
22 tion that has not been urged before the Commission shall
23 be considered by the court, unless the failure or neglect to
24 urge such objection shall be excused because of extraordi-
25 nary circumstances. The findings of the Commission with

1 respect to questions of fact, if supported by substantial evi-
2 dence on the record considered as a whole, shall be conclu-
3 sive. If any party shall apply to the court for leave to adduce
4 additional evidence and shall show to the satisfaction of the
5 court that such additional evidence is material and that there
6 were reasonable grounds for the failure to adduce such evi-
7 dence in the hearing before the Commission, the court may
8 order such additional evidence to be taken before the Com-
9 mission and to be made a part of the record. The Commis-
10 sion may modify its findings as to the facts, or to make new
11 findings, by reason of additional evidence so taken and filed,
12 and it shall file such modified or new findings, which findings
13 with respect to questions of fact, if supported by substantial
14 evidence on the record considered as a whole, shall be con-
15 clusive, and its recommendations, if any, for the modification
16 or setting aside of its original order. Upon the filing of the
17 record with it, the jurisdiction of the court shall be exclusive
18 and its judgment and decree shall be final, except that the
19 same shall be subject to review by the Supreme Court of the
20 United States, as provided in section 1254 of title 28, United
21 States Code. Petitions filed under this subsection shall be
22 heard expeditiously.

23 (e) The Secretary may also obtain review or enforce-
24 ment of any final order of the Commission by filing a peti-
25 tion for such relief in the court of appeals for the circuit in

1 which the violation occurred or in which the employer has
2 its principal office, and the provisions of subsection (d)
3 shall govern such proceedings to the extent applicable. If no
4 petition for review, as provided in subsection (d), is filed
5 within sixty days after service of the Commission's order,
6 the Commission's findings of fact and order shall be con-
7 clusive in connection with any petition for enforcement,
8 which is filed by the Secretary after the expiration of such
9 sixty-day period. In any such case, as well as in the case
10 of a noncontested citation or notification by the Secretary
11 which has become a final order of the Commission under
12 subsection (a) or (b), the clerk of the court, unless other-
13 wise ordered by the court, shall forthwith enter a decree en-
14 forcing the order and shall transmit a copy of such decree
15 to the Secretary and the employer named in the petition.
16 In any contempt proceeding brought to enforce a decree of a
17 court of appeals entered pursuant to this subsection or sub-
18 section (d), the court of appeals may assess the penalties
19 provided in section 15, in addition to invoking any other
20 available remedies.

21 (f) No person shall discharge or in any other way dis-
22 criminate against an employee because of the exercise by
23 such employee on behalf of himself or others of any right
24 afforded by this Act, including action to determine the

1 extent of employee exposure to hazardous substances, or for
2 leaving a workplace upon the order of the Secretary or a
3 district court issued pursuant to section 12. Any employee
4 who believes that he has been discharged or otherwise dis-
5 criminated against by any person in violation of this sub-
6 section may, within thirty days after such violation occurs,
7 file a complaint with the Secretary alleging such discrim-
8 ination. Upon receipt of such complaint, the Secretary shall
9 cause such investigation to be made as he deems appropriate.
10 If upon such investigation, the Secretary determines that
11 the provisions of this subsection have been violated, he shall
12 so notify the Commission and the Commission shall afford an
13 opportunity for a hearing provided in subsection (c). If the
14 Commission finds that such violation did occur, it shall order
15 such affirmative action as may be appropriate, including, but
16 not limited to, the rehiring or reinstatement of the employee
17 to his former position with back pay.

18 THE OCCUPATIONAL SAFETY AND HEALTH REVIEW PANEL

19 SEC. 11. (a) The Occupational Safety and Health Re-
20 view Commission is hereby established. The Commission
21 shall be composed of three members who shall be appointed
22 by the President, by and with the advice and consent of the
23 Senate, from among persons who by reason of training, edu-
24 cation, or experience are qualified to carry out the functions
25 of the Commission under this Act. The President shall design-

1 nate one of the members of the Commission to serve as
2 Chairman.

3 (b) The terms of members of the Commission shall be
4 five years except that (1) the members of the Commission
5 first taking office shall serve, as designated by the President
6 at the time of appointment, one for a term of three years,
7 one for a term of four years, and one for a term of five years,
8 and (2) a vacancy caused by the death, resignation, or re-
9 moval of a member prior to the expiration of the term for
10 which he was appointed shall be filled only for the remainder
11 of such unexpired term. A member of the Commission may
12 be removed by the President for inefficiency, neglect of duty,
13 or malfeasance in office.

14 (c) Section 5315 of title 5, United States Code, is
15 amended by adding at the end thereof the following new
16 paragraph:

17 “(94) Members, Occupational Safety and Health
18 Review Commission.”

19 (d) The principal office of the Commission shall be in
20 the District of Columbia. Whenever the Commission deems
21 that the convenience of the public or of the parties may be
22 promoted, or delay or expense may be minimized, it may
23 hold hearings or conduct other proceedings at any other
24 place.

25 (e) The Chairman shall be responsible on behalf of the

1 Commission for the administrative operations of the Commis-
2 sion and shall appoint such hearing examiners and other
3 employees as he deems necessary to assist in the performance
4 of the Commission's functions and to fix their compensation
5 in accordance with the provisions of chapter 51 and sub-
6 chapter III of chapter 53 of title 5, United States Code, re-
7 lating to classification and General Schedule pay rates:
8 *Provided*, That assignment, removal and compensation of
9 hearing examiners shall be in accordance with sections
10 3105, 3344, 5362, and 7521 of title 5, United States Code.

11 (f) For the purpose of carrying out its functions under
12 this Act, two members of the Commission shall constitute
13 a quorum and official action can be taken only on the affirma-
14 tive vote of at least two members.

15 (g) Every official act of the Commission shall be en-
16 tered of record, and its hearings and records shall be open
17 to the public. The Commission is authorized to make such
18 rules as are necessary for the orderly transaction of its pro-
19 ceedings, which shall provide for adequate notice of hear-
20 ings to all parties.

21 (h) The Commission may order testimony to be taken
22 by deposition in any proceedings pending before it at any
23 stage of such proceeding. Any person may be compelled to
24 appear and depose, and to produce books, papers, or docu-
25 ments, in the same manner as witnesses may be compelled

1 to appear and testify and produce like documentary evidence
2 before the Commission. Witnesses whose depositions are
3 taken under this subsection, and the persons taking such
4 depositions, shall be entitled to the same fees as are paid for
5 like services in the courts of the United States.

6 (i) For the purpose of any proceeding before the Com-
7 mission, the provisions of section 11 of the National Labor
8 Relations Act (29 U.S.C. 161) are hereby made applicable
9 to the jurisdiction and powers of the Commission.

10 (j) A hearing examiner appointed by the Commission
11 shall hear, and make a determination upon, any proceeding
12 instituted before the Commission and any motion in connec-
13 tion therewith, assigned to such hearing examiner by the
14 Chairman of the Commission, and shall make a report of any
15 such determination which constitutes his final disposition of
16 the proceedings. The report of the hearing examiner shall
17 become the final order of the Commission within thirty days
18 after such report by the hearing examiner, unless within
19 such period any Commission member has directed that such
20 report shall be reviewed by the Commission.

21 PROCEDURES TO COUNTERACT IMMINENT DANGERS

22 SEC. 12. (a) If, upon inspection or investigation of a
23 place of employment, the Secretary determines that an immi-
24 nent danger exists in such place of employment, the Secretary

1 may bring a civil action in the United States district court
2 for the district where the imminent danger exists or where the
3 employer has its principal office for a temporary restraining
4 order or injunction requiring such steps to be taken as may
5 be necessary to avoid, correct, or remove such imminent
6 danger and prohibiting the employment or presence of any
7 individual in locations or under conditions where such im-
8 minent danger exists, except individuals whose presence is
9 necessary to avoid, correct, or remove such imminent danger
10 or to maintain the capacity of a continuous process operation
11 to restart without a complete cessation of operations, or where
12 a cessation of operations is necessary, to permit such to be
13 accomplished in a safe and orderly manner. An action may
14 be brought under this subsection while an order of the Sec-
15 retary under subsection (b) is in effect. As used in this
16 section the term "imminent danger" means a condition or
17 practice which could reasonably be expected to cause death
18 or serious physical harm before such conditions or practice
19 can be abated.

20 (b) If the Secretary determines that the imminence of
21 a danger referred to in subsection (a) is such that immediate
22 action is necessary, and the Secretary determines that there
23 is not sufficient time, in light of the nature and imminence of
24 the danger, to seek and obtain a temporary restraining order
25 or injunction under subsection (a) of this section, the Secre-

1 tary shall issue an order requiring such steps to be taken as
2 may be necessary to avoid, correct, or remove such imminent
3 danger and prohibiting the employment or presence of any
4 individual in locations or under conditions where such immi-
5 nent danger exists, except individuals whose presence is nec-
6 essary to avoid, correct, or remove such imminent danger, or
7 to maintain the capacity of a continuous process operation to
8 restart without a complete cessation of operations, or where a
9 cessation of operations is necessary, to permit such to be
10 accomplished in a safe and orderly manner. Such order may
11 remain in effect for not more than seventy-two hours from
12 the time of its issuance. If the Secretary delegates his au-
13 thority to issue such an order to close a business or plant, in
14 whole or in substantial part, he shall provide that such an
15 order may not be issued until the employer has been notified
16 in writing, signed by the delegate of the Secretary, setting
17 forth specifically the nature and imminence of the danger
18 compelling immediate action and the concurrence of an offi-
19 cial of the Labor Department appointed by the President
20 with the advice and consent of the Senate is first obtained.
21 The Secretary shall by regulation provide appropriate pro-
22 cedures whereby an employer may obtain expeditious in-
23 formal reconsideration by officials of the Department of Labor
24 of any order issued under this subsection.

25 (c) If the Secretary arbitrarily or capriciously fails to

1 issue an order or seek relief under this section, any em-
2 ployee who may be injured by reason of such failure, or
3 the representative of such employees, may bring an action
4 against the Secretary in the United States district court for
5 the district in which the imminent danger is alleged to exist
6 or the employer has its principal office, or for the District
7 of Columbia, for a writ of mandamus to compel the Secre-
8 tary to issue such an order and for such further relief as
9 may be appropriate.

10 REPRESENTATION IN CIVIL LITIGATION

11 SEC. 13. Except as provided in section 518 (a) of title
12 28, United States Code, relating to litigation before the
13 Supreme Court, the Solicitor of Labor may appear for and
14 represent the Secretary in any civil litigation brought under
15 this Act but all such litigation shall be subject to the direc-
16 tion and control of the Attorney General.

17 CONFIDENTIALITY OF TRADE SECRETS

18 SEC. 14. All information reported to or otherwise ob-
19 tained by the Secretary or his representative in connection
20 with any inspection or proceeding under this Act which con-
21 tains or which might reveal a trade secret referred to in sec-
22 tion 1905 of title 18 of the United States Code shall be con-
23 sidered confidential for the purpose of that section, except
24 that such information may be disclosed to other officers or
25 employees concerned with carrying out this Act or when

1 relevant in any proceeding under this Act. In any such
2 proceeding the Secretary or the court shall issue such orders
3 as may be appropriate to protect the confidentiality of trade
4 secrets.

5 PENALTIES

6 SEC. 15. (a) Any employer who violates any standard
7 promulgated under section 6, or the requirements of sec-
8 tions 6 (d) , 8 (c) , 19, or any rule, regulation, or order issued
9 pursuant to one of those sections, and who has received a
10 citation therefor, shall be assessed a civil penalty of not
11 more than \$1,000 for each such violation. Any employer
12 who fails to correct a violation for which a citation has
13 been issued under section 9 (a) within the period permitted
14 for its correction (which period shall not begin to run until
15 the date of the final order of the Commission in the case of
16 any review proceeding under section 10 initiated by the em-
17 ployer in good faith and not solely for delay or avoidance
18 of penalties) , or who fails to comply with an order issued
19 under section 12 (b) , shall be assessed a civil penalty of not
20 more than \$1,000 for each day during which such failure or
21 violation continues.

22 (b) The Secretary may compromise, mitigate, or settle
23 any claim for civil penalties. In assessing the penalty con-
24 sideration shall be given to the appropriateness of such pen-
25 alty to the size of the business of the person charged, to the

1 gravity of the violation, to the history of previous violations,
2 and to the good faith of the employer.

3 (c) Any employer who willfully violates any standard
4 promulgated under section 6, or the requirements of sections
5 6(d), 8(c), 19, or of any rule, regulation or order issued
6 pursuant to one of those sections, shall, upon conviction, be
7 punished by a fine of not more than \$10,000 or by imprison-
8 ment for not more than six months, or by both; except that if
9 the conviction is for a violation committed after a first convic-
10 tion of such person, punishment shall be by a fine of not more
11 than \$20,000 or by imprisonment for not more than one
12 year, or by both.

13 (d) Any person who gives advance notice of any in-
14 spection to be conducted under this Act, without authority
15 from the Secretary or his designees, shall, upon conviction,
16 be punished by a fine of not more than \$1,000 or by im-
17 prisonment for not more than six months, or by both.

18 (e) Whoever knowingly makes any false statement,
19 representation, or certification in any application, record,
20 report, plan, or other document filed or required to be
21 maintained pursuant to this Act shall, upon conviction, be
22 punished by a fine of not more than \$10,000, or by imprison-
23 ment for not more than six months, or by both.

24 (f) Section 1114 of title 18, United States Code, is
25 hereby amended by striking out "designated by the Secre-

1 tary of Health, Education, and Welfare to conduct investiga-
2 tions, or inspections under the Federal Food, Drug, and
3 Cosmetic Act” and inserting in lieu thereof “or of the De-
4 partment of Labor assigned to perform investigative, inspec-
5 tion, or law enforcement functions”.

6 VARIATIONS, TOLERANCES, AND EXEMPTIONS

7 SEC. 16. The Secretary may establish such rules and
8 regulations allowing reasonable variations, tolerances, and
9 exemptions to and from any or all provisions of this Act
10 as he may find necessary and proper to avoid serious impair-
11 ment of the national defense. Action under this section shall
12 not be in effect for more than six months without notification
13 to affected employees and an opportunity being afforded for a
14 hearing.

15 STATE JURISDICTION AND STATE PLANS

16 SEC. 17. (a) Nothing in this Act shall prevent any
17 State agency or court from asserting jurisdiction under State
18 law over any occupational safety or health issue with respect
19 to which no standard is in effect under section 6.

20 (b) Any State which, at any time, desires to assume
21 responsibility for the development and enforcement in such
22 State of occupational safety and health standards relating to
23 any occupational safety or health issue with respect to which
24 a Federal standard has been promulgated under section 6

1 shall submit a State plan for the development of such stand-
2 ards and their enforcement.

3 (c) The Secretary shall approve the plan submitted by
4 a State under subsection (b), or any modification thereof,
5 if such plan in his judgment—

6 (1) designates a State agency or agencies to be
7 responsible for administering the plan throughout the
8 State,

9 (2) provides for the development and enforcement
10 of safety and health standards relating to one or more
11 safety or health issues, which standards (and the enforce-
12 ment of which standards) are at least as effective in
13 providing safe and healthful employment and places of
14 employment as the standards promulgated under section
15 6 which relate to the same issues, and which standards,
16 when applicable to products which are distributed or
17 used in interstate commerce, are required by compelling
18 local conditions and do not unduly burden interstate
19 commerce,

20 (3) provides for a right of entry and inspection of
21 all places of employment subject to the plan which is at
22 least as effective as that provided in section 8 (a), (c),

23 (d) and (e), and includes a prohibition on advance
24 notice of inspections,

25 (4) contains satisfactory assurances that such

1 agency or agencies will have the legal authority and
2 qualified personnel necessary for the enforcement of
3 such standards,

4 (5) gives satisfactory assurances that such State
5 will devote adequate funds to the administration and
6 enforcement of such standards,

7 (6) contains satisfactory assurances that such State
8 will, to the extent permitted by its law, establish and
9 maintain an effective and comprehensive occupational
10 safety and health program applicable to all employees
11 of public agencies of the State and its political subdivi-
12 sions over which it has jurisdiction, which program shall
13 be as effective as the standards contained in the approved
14 plan,

15 (7) requires employers in the State to make re-
16 ports to the Secretary in the same manner and to the
17 same extent as if the plan were not in effect, and

18 (8) provides that the State agency will make such
19 reports to the Secretary in such form and containing
20 such information, as the Secretary shall from time to
21 time require.

22 (d) If the Secretary disapproves a plan submitted under
23 this section, he shall afford the State submitting the plan,
24 due notice and opportunity for a hearing.

25 (e) After the Secretary approves a State plan submitted

1 under subsection (b), he may, but shall not be required to,
2 exercise his authority under sections 8, 9, 10, and 15 with
3 respect to comparable standards promulgated under section
4 6, for the period specified in this subsection. The Secretary
5 may exercise the authority referred to above until he deter-
6 mines, on the basis of actual operations under the State plan,
7 that the criteria set forth in subsection (c) are being applied,
8 but he shall not make such a determination for at least three
9 years after approval of the plan under subsection (c). Upon
10 making the determination referred to in the preceding sen-
11 tence, the provisions of section 5 (a) (2) and (b), 8 (except
12 for purpose of carrying out subsection (f) of this section), 9,
13 10, and 15, and standards promulgated under section 6 of
14 this Act, shall not apply with respect to any occupational
15 safety or health issues covered under the plan, but the Secre-
16 tary may retain jurisdiction under the above provisions in
17 any proceeding commenced under section 9 or 10 before the
18 date of a determination under this subsection.

19 (f) The Secretary shall, on the basis of reports sub-
20 mitted by the State agency and his own inspections make a
21 continuing evaluation of the manner in which each State
22 having a plan approved under this section is carrying out
23 such plan. Whenever the Secretary finds, after affording
24 due notice and opportunity for a hearing, that in the adminis-
25 tration of the State plan there is a failure to comply sub-

stantially with any provision of the State plan, he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon cer-

1 tierari or certification as provided in section 1254 of title
2 28, United States Code.

3 (h) Pending approval of a plan submitted by a State
4 under subsection (b) of this section, the Secretary may enter
5 into an agreement with such State under which the State
6 will be permitted to continue to enforce one or more occu-
7 pational health and safety standards in effect in such State
8 which are not in conflict with Federal occupational health
9 and safety standards promulgated under this Act until final
10 action is taken by the Secretary with respect to the plan
11 submitted by the State, or two years from the date of en-
12 actment of this Act, whichever is earlier. Except as other-
13 wise provided in this section, any State occupational health
14 and safety standard which provides for more stringent health
15 and safety regulations than do the Federal standards promul-
16 gated under this Act shall not thereby be considered to be
17 in conflict with such Federal standards.

18 (i) For the purpose of this section, the term "State"
19 includes a State of the United States, the District of Colum-
20 bia, Puerto Rico, the Virgin Islands, American Samoa,
21 Guam, and the Trust Territory of the Pacific Islands.

22 FEDERAL AGENCY SAFETY PROGRAMS AND
23 RESPONSIBILITIES

24 SEC. 18. (a) It shall be the responsibility of the head
25 of each Federal agency to establish and maintain an effective
26 and comprehensive occupational safety and health program

1 which is consistent with the standards promulgated under
2 section 6. The head of each agency shall, after consultation
3 with representatives of the employees thereof—

4 (1) provide safe and healthful places and condi-
5 tions of employment, consistent with the standards set
6 under section 6;

7 (2) acquire, maintain, and require the use of safety
8 equipment, personal protective equipment, and devices
9 reasonably necessary to protect employees;

10 (3) keep adequate records of all occupational acci-
11 dents and illnesses for proper evaluation and necessary
12 corrective action;

13 (4) consult with the Secretary with regard to the
14 adequacy as to form and content of records kept pur-
15 suant to paragraph (3) ; and

16 (5) make an annual report to the Secretary with
17 respect to occupational accidents and injuries and the
18 agency's program under this section. Such report shall
19 include any report submitted under section 7902 (e) (2)
20 of title 5, United States Code.

21 (b) The Secretary shall prepare and submit to the Pres-
22 ident for transmittal to the Congress a summary or digest of
23 reports submitted to him under subsection (a) (4) of this
24 section, together with his evaluation of and recommendations
25 derived from such reports.

1 (c) Section 7902 (c) (1) of title 5, United States Code,
2 is amended by inserting after "agencies" the following: "and
3 of labor organizations representing employees".

4 (d) The Secretary shall have access to records and
5 reports kept and filed by Federal agencies pursuant to sub-
6 sections (a) (3) and (5) of this section unless those records
7 and reports are specifically required by Executive order to
8 be kept secret in the interest of the national defense or foreign
9 policy, in which case the Secretary shall have access to such
10 information as will not jeopardize national defense or foreign
11 policy.

12 **RESEARCH, TRAINING, AND RELATED ACTIVITIES**

13 **SEC. 19.** (a) (1) The Secretary of Health, Education,
14 and Welfare, after consultation with the Secretary and with
15 the heads of other appropriate Federal departments or agen-
16 cies, shall conduct, either directly or by way of grant or con-
17 tract, research, experiments, and demonstrations relating to
18 occupational safety and health, including studies of psycholog-
19 ical factors involved and the development of innovative meth-
20 ods, techniques, and approaches for dealing with existing or
21 anticipated occupational safety and health problems.

22 (2) The Secretary of Health, Education, and Welfare
23 shall be responsible for producing criteria upon which the
24 Secretary may formulate occupational safety and health
25 standards under this Act, and shall from time to time consult

1 with the Secretary in order to develop specific plans for such
2 research, demonstrations, and experiments as are necessary
3 to produce such criteria. The Secretary of Health, Education,
4 and Welfare, on the basis of such research, demonstrations,
5 and experiments and any other information available to him.
6 shall develop such criteria dealing with toxic materials and
7 harmful physical agents which will demonstrate the exposure
8 levels at which no employee will suffer impaired health or
9 functional capacities, or diminished life expectancy as a result
10 of his work experience.

11 (3) The Secretary of Health, Education, and Welfare,
12 in order to comply with his responsibilities under paragraph
13 (2), and in order to develop needed information regarding
14 potentially toxic substances or harmful physical agents, may
15 prescribe regulations requiring employers to measure, record,
16 and make reports on the exposure of employees to sub-
17 stances or physical agents which the Secretary of Health,
18 Education, and Welfare reasonably believes may endanger
19 the health or safety of employees. The Secretary of Health,
20 Education, and Welfare also is authorized to establish such
21 programs of medical examinations and tests as may be neces-
22 sary for determining the incidence of occupational illnesses
23 and the susceptibility of employees to such illnesses. Noth-
24 ing in this or any other provision of this Act shall be deemed
25 to authorize or require medical examination, immunization, or

1 treatment for those who object thereto on religious grounds,
2 except where such is necessary for the protection of the
3 health or safety of others. Upon the request of any employer
4 who is required to measure and record exposure of employees
5 to substances or physical agents as provided under this sub-
6 section, the Secretary of Health, Education, and Welfare shall
7 furnish full financial or other assistance to such employer for
8 the purpose of defraying any additional expense incurred by
9 him in carrying out the measuring and recording as pro-
10 vided in this subsection.

11 (4) The Secretary of Health, Education, and Welfare
12 shall publish within six months of enactment of this Act, and
13 thereafter maintain at least annually, a list of all sub-
14 stances used or found in the workplace and known to be
15 potentially toxic and the concentrations at which such toxicity
16 is known to occur. He shall determine following a written
17 request by any employer or authorized representative of em-
18 ployees, specifying with reasonable particularity the grounds
19 on which the request is made, whether any substance nor-
20 mally found in the place of employment has potentially toxic
21 effects in such concentrations as used or found; and shall
22 submit such determination both to employers and affected
23 employees as soon as possible. If the Secretary of Health,
24 Education, and Welfare determines that any substance is
25 potentially toxic at the concentrations in which it is used or

1 found in a place of employment, and such substance is not
2 covered by an occupational safety or health standard promul-
3 gated under section 6, the Secretary of Health, Education,
4 and Welfare shall immediately submit such determination to
5 the Secretary, together with all pertinent criteria.

6 (5) Within two years of enactment of this Act, and
7 annually thereafter, the Secretary of Health, Education, and
8 Welfare shall conduct and publish industrywide studies of
9 the effect of chronic or low-level exposure to industrial mate-
10 rials, processes, and stresses on the potential for illness,
11 disease, or loss of functional capacity in aging adults.

12 (6) The Secretary of Health, Education, and Welfare
13 is authorized to make inspections and question employers
14 and employees as provided in section 8 of this Act in order
15 to carry out his functions and responsibilities under this
16 section.

17 (b) The Secretary is authorized to enter into contracts,
18 agreements, or other arrangements with appropriate public
19 agencies or private organizations for the purposes of conduct-
20 ing studies related to the establishing and applying of occu-
21 pational safety and health standards under section 6 of this
22 Act. In carrying out his functions under this subsection,
23 the Secretary and the Secretary of Health, Education, and
24 Welfare shall cooperate in order to avoid any duplication of
25 efforts under this section.

1 (c) Information obtained by the Secretary and the
2 Secretary of Health, Education, and Welfare under this
3 section shall be disseminated by the Secretary to employers
4 and employees and organizations thereof.

5 (d) The Secretary of Health, Education, and Wel-
6 fare, after consultation with the Secretary of Labor and
7 with the heads of other appropriate Federal agencies, shall
8 conduct, either directly or by way of grant or contract (1)
9 education programs to provide an adequate supply of quali-
10 fied personnel to carry out the purposes of this Act, and (2)
11 informational programs on the importance of and proper use
12 of adequate safety and health equipment.

13 (e) The Secretary is also authorized to conduct, either
14 directly or by way of grant or contract, short-term training
15 of personnel engaged in work related to his functions under
16 this Act.

17 (1) The Secretary, in consultation with the Secretary
18 of Health, Education, and Welfare, shall provide for the
19 establishment and supervision of programs for the education
20 and training of employers and employees in the recognition,
21 avoidance, and prevention of unsafe or unhealthful working
22 conditions in places of employment covered by this Act, and
23 to consult with and advise employers and employees, and
24 organizations representing employers and employees, with

1 respect to effective means of preventing occupational injuries
2 and illnesses.

3 (g) The functions of the Secretary of Health, Educa-
4 tion, and Welfare under this Act shall, to the extent feasible,
5 be delegated to the Director of the National Institute for Oc-
6 cupational Safety and Health established by section 20 of
7 this Act.

8 NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND
9 HEALTH

10 SEC. 20. (a) It is the purpose of this section to establish
11 a National Institute for Occupational Safety and Health in
12 the Department of Health, Education, and Welfare in order
13 to carry out the policy set forth in section 2 of this Act and
14 to perform the functions of the Secretary of Health, Educa-
15 tion, and Welfare under section 19 of this Act.

16 (b) As used in this section—

17 (1) the term "Director" means the Director of the
18 National Institute for Occupational Safety and Health;
19 and

20 (2) the term "Institute" means the National In-
21 stitute for Occupational Safety and Health.

22 (c) There is hereby established in the Department of
23 Health, Education, and Welfare a National Institute for
24 Occupational Safety and Health. The Institute shall be

1 headed by a Director who shall be appointed by the Secre-
2 tary of Health, Education, and Welfare, and who shall serve
3 for a term of six years unless previously removed by the
4 Secretary.

5 (d) The Institute is authorized to—

6 (1) develop and establish recommended occupa-
7 tional safety and health standards; and

8 (2) perform all functions of the Secretary of
9 Health, Education, and Welfare under section 19 of
10 this Act.

11 (e) Upon his own initiative, or upon the request of the
12 Secretary of Labor or the Secretary of Health, Education,
13 and Welfare, the Director is authorized (1) to conduct such
14 research and experimental programs as he determines is
15 necessary for the development of criteria for new and im-
16 proved occupational safety and health standards, and (2)
17 after consideration of the results of such research and ex-
18 perimental programs make recommendations concerning new
19 or improved occupational safety and health standards. Any
20 occupational safety and health standard recommended pur-
21 suant to this section shall immediately be forwarded to the
22 Secretary of Labor, and to the Secretary of Health, Educa-
23 tion, and Welfare.

24 (f) In addition to any authority vested in it by other

1 provisions of this section, the Director, in carrying out its
2 functions, is authorized to—

3 (1) prescribe such regulations as he deems neces-
4 sary governing the manner in which its functions shall
5 be carried out;

6 (2) receive money and other property donated,
7 bequeathed, or devised, without condition or restriction
8 other than that it be used for the purposes of the Insti-
9 tute and to use, sell, or otherwise dispose of such property
10 for the purpose of carrying out its functions;

11 (3) in the discretion of the Director, receive (and
12 use, sell, or otherwise dispose of, in accordance with
13 paragraph (2)), money and other property donated,
14 bequeathed, or devised to the Institute with a condi-
15 tion or restriction, including a condition that the Insti-
16 tute use other funds of the Institute for the purposes
17 of the gift;

18 (4) in accordance with the civil service laws,
19 appoint and fix the compensation of such personnel
20 as may be necessary to carry out the provisions of this
21 section;

22 (5) obtain the services of experts and consultants
23 in accordance with the provisions of section 3109 of
24 title 5, United States Code;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(7) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or any other provision of law relating to competitive bidding;

(8) make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(9) make other necessary expenditures.

(g) The Institute shall submit to the Secretary of Health, Education, and Welfare, to the President, and to the Congress an annual report of its operations under this Act, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as the Institute deems appropriate.

GRANTS TO THE STATES; STATISTICS

SEC. 21. (a) (1) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding

1 fiscal years, to make grants to the States which have design-
2 nated a State agency under section 17 (c) to assist them—

3 (A) in identifying their needs and responsibilities
4 in the area of occupational safety and health,

5 (B) in developing State plans under section 17, or

6 (C) in developing plans for—

7 (i) establishing systems for the collection of
8 information concerning the nature and frequency of
9 occupational injuries and diseases;

10 (ii) increasing the expertise and enforcement
11 capabilities of their personnel engaged in occupa-
12 tional safety and health programs; or

13 (iii) otherwise improving the administration
14 and enforcement of State occupational safety and
15 health laws, including standards thereunder, con-
16 sistent with the objectives of this Act.

17 (2) The Secretary is authorized, during the fiscal year
18 ending June 30, 1971, and the two succeeding fiscal years, to
19 make grants to the States for experimental and demonstra-
20 tion projects consistent with the objectives set forth in para-
21 graph (1) of this subsection.

22 (3) The Governor of the State shall designate the
23 appropriate State agency for receipt of any grant made by
24 the Secretary under this section.

25 (4) Any State agency designated by the Governor of

1 the State desiring a grant under this section shall submit an
2 application therefor to the Secretary.

3 (5) The Secretary shall review the application, and
4 shall, after consultation with the Secretary of Health, Edu-
5 cation, and Welfare, approve or reject such application.

6 (6) The Federal share for each State grant under para-
7 graphs (1) or (2) of this subsection may not exceed 90 per
8 centum of the total cost of the application. In the event the
9 Federal share for all States under either such subsection is
10 not the same, the differences among the States shall be
11 established on the basis of objective criteria.

12 (7) The Secretary is authorized to make grants to the
13 States to assist them in administering and enforcing pro-
14 grams for occupational safety and health contained in State
15 plans approved by the Secretary pursuant to section 17 of
16 this Act. The Federal share for each State grant under this
17 subsection may not exceed 50 per centum of the total cost
18 to the State of such a program. The last sentence of para-
19 graph (6) shall be applicable in determining the Federal
20 share under this subsection.

21 (8) Prior to June 30, 1973, the Secretary shall, after
22 consultation with the Secretary of Health, Education, and
23 Welfare, transmit a report to the President and to the Con-
24 gress, describing the experience under the grant programs

1 authorized by this section and making any recommendations
2 he may deem appropriate.

3 (b) (1) In order to further the purposes of this Act,
4 the Secretary shall develop and maintain an effective pro-
5 gram of collection, compilation, and analysis of occupational
6 safety and health statistics.

7 (2) To carry out his duties under paragraph (1) of
8 this subsection, the Secretary is authorized to—

9 (A) promote, encourage, or directly engage in pro-
10 grams of studies, information and communication con-
11 cerning occupational safety and health statistics;

12 (B) make grants to States or political subdivisions
13 thereof in order to assist them in developing and admin-
14 istering programs dealing with occupational safety and
15 health statistics; and

16 (C) arrange, through grants or contracts, for the
17 conduct of such research and investigations as give
18 promise of furthering the objectives of this section.

19 (3) The Federal share of each State grant under para-
20 graph (2) of this section may be up to 50 per centum of the
21 State's total cost.

22 (4) The Secretary may, with the consent of any State
23 or political subdivision thereof, accept and use the services,
24 facilities, and employees of the agencies of such State or

1 political subdivision, with or without reimbursement, in order
2 to assist him in carrying out his functions under this section.

3 (5) On the basis of the records made and kept pursuant
4 to section 8 (c) of this Act, employers shall file such reports
5 with the Secretary as he shall prescribe by regulation, as
6 necessary to carry out his functions under this Act.

7

AUDITS

8 Sec. 22. (a) Each recipient of a grant under this Act
9 shall keep such records as the Secretary or the Secretary of
10 Health, Education, and Welfare shall prescribe, including
11 records which fully disclose the amount and disposition of
12 the project or undertaking in connection with which such
13 grant is made or used, and the amount of that portion of
14 the cost of the project or undertaking supplied by other
15 sources, and such other records as will facilitate an effective
16 audit.

17 (b) The Secretary or the Secretary of Health, Educa-
18 tion, and Welfare, and the Comptroller General of the
19 United States, or any of their duly authorized representatives,
20 shall have access for the purpose of audit and examination
21 to any books, documents, papers, and records of the recipients
22 of any grant under this Act that are pertinent to any such
23 grant.

24

ANNUAL REPORT

25 Sec. 23. Within one hundred and twenty days following
26 the convening of each regular session of each Congress, the

1 Secretary and the Secretary of Health, Education, and Wel-
2 fare shall each prepare and submit to the President for trans-
3 mittal to the Congress a report upon the subject matter of this
4 Act, the progress toward achievement of the purpose of
5 this Act, the needs and requirements in the field of occupa-
6 tional safety and health, and any other relevant informa-
7 tion. Such reports shall include information regarding occu-
8 pational safety and health standards, and criteria for such
9 standards, developed during the preceding year; evaluation
10 of standards and criteria previously developed under this
11 Act, defining areas of emphasis for new criteria and stand-
12 ards; an evaluation of the degree of observance of applicable
13 occupational safety and health standards and summary of
14 inspection and enforcement activity undertaken; analysis
15 and evaluation of research activities for which results have
16 been obtained under governmental and nongovernmental
17 sponsorship; an analysis of major occupational diseases;
18 evaluation of available control and measurement technol-
19 ogy for hazards for which standards or criteria have been
20 developed during the preceding year; description of coopera-
21 tive efforts undertaken between Government agencies and
22 other interested parties in the implementation of this Act
23 during the preceding year; a progress report on the develop-
24 ment of an adequate supply of trained manpower in the field
25 of occupational safety and health, including estimates of
26 future needs and the efforts being made by Government and

1 others to meet those needs; listing of all toxic substances in
2 industrial usage for which labeling requirements, criteria,
3 or standards have not yet been established; and such recom-
4 mendations for additional legislation as are deemed necessary
5 to protect the safety and health of the worker and improve
6 the administration of this Act.

7 NATIONAL COMMISSION ON STATE WORKMEN'S
8 COMPENSATION LAWS

9 SEC. 24. (a) (1) The Congress hereby finds and de-
10 clares that—

11 (A) the vast majority of American workers, and
12 their families, are dependent on workmen's compensation
13 for their basic economic security in the event such work-
14 ers suffer disabling injury or death in the course of their
15 employment; and that the full protection of American
16 workers from job-related injury or death requires an
17 adequate, prompt, and equitable system of workmen's
18 compensation as well as an effective program of occupa-
19 tional health and safety regulation; and

20 (B) in recent years serious questions have been
21 raised concerning the fairness and adequacy of present
22 workmen's compensation laws in the light of the growth
23 of the economy, the changing nature of the labor force,
24 increases in medical knowledge, changes in the hazards
25 associated with various types of employment, new tech-

1 nology creating new risks to health and safety, and in-
2 creases in the general level of wages and the cost of
3 living.

4 (2) The purpose of this section is to authorize an
5 effective study and objective evaluation of State workmen's
6 compensation laws in order to determine if such laws
7 provide an adequate, prompt, and equitable system of com-
8 pensation for injury or death arising out of or in the course
9 of employment.

10 (b) There is hereby established a National Commission
11 on State Workmen's Compensation Laws (hereinafter re-
12 ferred to as the "Commission").

13 (c) (1) The Commission shall be composed of fifteen
14 members to be appointed by the President from among mem-
15 bers of State workmen's compensation boards, representa-
16 tives of insurance carriers, business, labor, members of the
17 medical profession having experience in industrial medicine
18 or in workmen's compensation cases, educators having spe-
19 cial expertise in the field of workmen's compensation, and
20 representatives of the general public. The Secretary of Labor,
21 the Secretary of Commerce, and the Secretary of Health,
22 Education, and Welfare shall be ex officio members of the
23 Commission.

24 (2) Any vacancy in the Commission shall not affect its
25 powers.

1 (3) The President shall designate one of the members
2 to serve as Chairman and one to serve as Vice Chairman of
3 the Commission.

4 (4) Eight members of the Commission shall constitute a
5 quorum.

6 (d) (1) The Commission shall undertake a compre-
7 hensive study and evaluation of State workmen's compensa-
8 tion laws in order to determine if such laws provide an
9 adequate, prompt, and equitable system of compensation.
10 Such study and evaluation shall include, without being lim-
11 ited to, the following subjects: (A) the amount and duration
12 of permanent and temporary disability benefits and the cri-
13 teria for determining the maximum limitations thereon. (B)
14 the amount and duration of medical benefits and provisions
15 insuring adequate medical care and free choice of physician.
16 (C) the extent of coverage of workers, including exemptions
17 based on numbers or type of employment. (D) standards for
18 determining which injuries or diseases should be deemed com-
19 pensable. (E) rehabilitation. (F) coverage under second or
20 subsequent injury funds. (G) time limits on filing claims.
21 (H) waiting periods. (I) compulsory or elective coverage.
22 (J) administration. (K) legal expenses. (L) the feasibility
23 and desirability of a uniform system of reporting information
24 concerning job-related injuries and diseases and the operation
25 of workmen's compensation laws. (M) the resolution of con-

1 flict of laws, extraterritoriality and similar problems arising
2 from claims with multistate aspects, (N) the extent to which
3 private insurance carriers are excluded from supplying work-
4 men's compensation coverage and the desirability of such
5 exclusionary practices, to the extent they are found to exist,
6 (O) the relationship between workmen's compensation on
7 the one hand, and old-age, disability, and survivors insur-
8 ance and other types of insurance, public or private, on the
9 other hand, (P) methods of implementing the recommenda-
10 tions of the Commission.

11 (2) The Commission shall transmit to the President
12 and to the Congress not later than February 1, 1972, a final
13 report containing a detailed statement of the findings and
14 conclusions of the Commission, together with such recom-
15 mendations as it deems advisable.

16 (e) (1) The Commission or, on the authorization of
17 the Commission, any subcommittee or members thereof,
18 may, for the purpose of carrying out the provisions of this
19 title, hold such hearings, take such testimony, and sit and act
20 at such times and places as the Commission deems advisable.
21 Any member authorized by the Commission may administer
22 oaths or affirmations to witnesses appearing before the Com-
23 mission or any subcommittee or members thereof.

24 (2) Each department, agency, and instrumentality of
25 the executive branch of the Government, including independ-

ent agencies, is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairman, such information as the Commission deems necessary to carry out its functions under this section.

(f) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

(g) The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

1 (h) Members of the Commission shall receive com-
2 pensation for each day they are engaged in the performance
3 of their duties as members of the Commission at the daily
4 rate prescribed for GS-18 under section 5332 of title 5,
5 United States Code, and shall be entitled to reimbursement
6 for travel, subsistence, and other necessary expenses incurred
7 by them in the performance of their duties as members of
8 the Commission.

9 (i) There are hereby authorized to be appropriated
10 such sums as may be necessary to carry out the provisions
11 of this section.

12 (j) On the ninetieth day after the date of submission
13 of its final report to the President, the Commission shall
14 cease to exist.

15 ECONOMIC ASSISTANCE TO SMALL BUSINESSES

16 SEC. 25. (a) Section 7 (b) of the Small Business Act,
17 as amended, is amended—

18 (1) by striking out the period at the end of “para-
19 graph (5)” and inserting in lieu thereof “; and”; and

20 (2) by adding after paragraph (5) a new para-
21 graph as follows:

22 “ (6) to make such loans (either directly or in co-
23 operation with banks or other lending institutions through
24 agreements to participate on an immediate or deferred

1 basis) as the Administration may determine to be neces-
2 sary or appropriate to assist any small business concern
3 in affecting additions to or alterations in the equipment,
4 facilities, or methods of operation of such business in
5 order to comply with the applicable standards promul-
6 gated pursuant to section 6 of the Occupational Safety
7 and Health Act or standards adopted by a State pursuant
8 to a plan approved under section 17 of the Occupational
9 Safety and Health Act of 1970, if the Administration de-
10 termines that such concern is likely to suffer substantial
11 economic injury without assistance under this para-
12 graph."

13 (b) The third sentence of section 7 (b) of the Small
14 Business Act, as amended, is amended by striking out "or
15 (5)" after "paragraph (3)" and inserting a comma fol-
16 lowed by "(5) or (6)".

17 (c) Section 4 (c) (1) of the Small Business Act, as
18 amended, is amended by inserting "7 (b) (6)," after "7 (b)
19 (5),".

20 (d) Loans may also be made or guaranteed for the
21 purposes set forth in section 7 (b) (6) of the Small Business
22 Act, as amended, pursuant to the provisions of section 202
23 of the Public Works and Economic Development Act of
24 1965, as amended.

1 ADDITIONAL ASSISTANT SECRETARY OF LABOR

2 SEC. 26. (a) Section 2 of the Act of April 17, 1946
3 (60 Stat. 91) as amended (29 U.S.C. 553) is amended
4 by—

5 (1) striking out “four” in the first sentence of such
6 section and inserting in lieu thereof “five”; and

7 (2) adding at the end thereof the following new
8 sentence: “One of such Assistant Secretaries shall be an
9 Assistant Secretary of Labor for Occupational Safety
10 and Health.”.

11 (b) Paragraph (20) of section 5315 of title 5, United
12 States Code, is amended by striking out “(4)” and insert-
13 ing in lieu thereof “(5)”.

14 ADDITIONAL POSITIONS

15 SEC. 27. Section 5108 (c) of title 5, United States Code,
16 is amended by adding a new paragraph (10) at the end of
17 the subsection to read as follows:

18 “(10) (a) the Secretary of Labor, subject to the
19 standards and procedures prescribed by this chapter,
20 may place an additional twenty-five positions in the De-
21 partment of Labor in GS-16, 17, and 18 for the pur-
22 poses of carrying out his responsibilities under the Occu-
23 pational Safety and Health Act of 1970;

24 “(b) the Occupational Safety and Health Review

1 Commission, subject to the standards and procedures
2 prescribed by this chapter, may place ten positions in
3 GS-16, 17, and 18 in carrying out its functions under
4 the Occupational Safety and Health Act of 1970."

5 **EMERGENCY LOCATOR BEACONS**

6 SEC. 28. Section 601 of the Federal Aviation Act of
7 1958 is amended by inserting at the end thereof a new sub-
8 section as follows:

9 **"EMERGENCY LOCATOR BEACONS**

10 "(d) (1) Except with respect to aircraft described in
11 paragraph (2) of this subsection, minimum standards pur-
12 suant to this section shall include a requirement that emer-
13 gency locator beacons shall be installed—

14 "(A) on any fixed-wing, powered aircraft for use
15 in air commerce the manufacture of which is completed,
16 or which is imported into the United States, after one
17 year following the date of enactment of this subsection;
18 and

19 "(B) on any fixed-wing, powered aircraft used in
20 air commerce after three years following such date.

21 "(2) The provisions of this subsection shall not apply
22 to jet-powered aircraft; aircraft used in air transportation
23 (other than air taxis and charter aircraft); military aircraft;
24 aircraft used solely for training purposes not involving flights

1 more than twenty miles from its base; and aircraft used for
2 the aerial application of chemicals."

3
4 **SEPARABILITY**

5 SEC. 29. If any provision of this Act, or the application
6 of such provision to any person or circumstance, shall be held
7 invalid, the remainder of this Act, or the application of such
8 provision to persons or circumstances other than those as to
9 which it is held invalid, shall not be affected thereby.

10 **APPROPRIATIONS**

11 SEC. 30. There are authorized to be appropriated to
12 carry out this Act for each fiscal year such sums as the
13 Congress shall deem necessary.

14 **EFFECTIVE DATE**

15 SEC. 31. This Act shall take effect on the first day of
16 the first month which begins more than thirty days after
the date of its enactment.

Passed the Senate November 17, 1970.

Attest:

FRANCIS R. VALEO,

Secretary.

Mr. WILLIAMS of New Jersey. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SCOTT and Mr. JAVITS moved to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. WILLIAMS of New Jersey. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 2193 and that the bill be printed as it passed the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, the Senate's overwhelming passage of this measure marks another major triumph for the distinguished Senator from New Jersey (Mr. Williams). His strong advocacy and his deep and abiding interest in worker safety joined to produce a measure that will gratify all involved in this vital area. Senator Williams deserves our deepest thanks for successfully steering this proposal both through the Committee on Labor and Public Welfare and through the Senate Chamber. We are most grateful.

We are grateful as well to the distinguished Senator from Colorado (Mr. Dominick) for his participation. He cooperated greatly to assure final passage today. The same may be said of the efforts of the distinguished Senator from New York (Mr. Javits). To other Senators also goes the gratitude of the Senate for their cooperation and support. Noteworthy was the strong backing of the able chairman of the Committee on Labor and Public Welfare, the distinguished Senator from Texas (Mr. Yarborough). There are many others as well—too numerous to cite—who deserve praise.

Finally, I wish to thank the Senate as a whole for cooperating to dispose of this measure this afternoon and to do so with full regard for the views of all Members.

91ST CONGRESS
1ST SESSION

H. R. 843

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1969

Mr. HATHAWAY introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage the States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Occupational Safety and
4 Health Act of 1969".

5 CONGRESSIONAL FINDINGS AND PURPOSE

6 SEC. 2. (a) The Congress finds that personal injuries
7 and illnesses arising out of work situations which result in
8 death or disability impose a substantial burden upon, and are

1 a hindrance to interstate commerce in terms of lost produc-
2 tion, wage loss, medical expenses, and disability compensa-
3 tion payments.

4 (b) The Congress declares it to be the purpose and
5 policy, through the exercise by Congress of its powers to
6 regulate commerce among the several States and with foreign
7 nations and to provide for the general welfare, to assure so
8 far as possible every working man and woman in the Nation
9 safe and healthful working conditions—

10 (1) by establishing mandatory occupational safety
11 and health standards applicable to businesses affecting
12 commerce;

13 (2) by providing for the effective enforcement of
14 such safety and health standards;

15 (3) by providing for research relating to occupa-
16 tional safety and health;

17 (4) by providing for training programs to increase
18 and improve personnel engaged in the field of occupa-
19 tional safety and health;

20 (5) by more clearly delineating the responsibilities
21 of the Federal Government and the States in their ac-
22 tivities related to occupational safety and health;

23 (6) by providing grants to the States to assist them
24 in identifying their needs and responsibilities in the
25 area of occupational safety and health, to develop plans

1 in accordance with the provisions of this Act, and to
2 conduct experimental and demonstration projects in
3 connection therewith; and

4 (7) by providing for appropriate accident and
5 health reporting procedures which will help achieve
6 the objectives of this Act.

7 STANDARDS

8 SEC. 3. (a) For purposes of this section:

9 (1) The term "occupational safety and health
10 standard" means a standard which requires conditions,
11 or the adoption or use of one or more practices, means,
12 methods, operations or processes, reasonably necessary
13 to provide safe or healthful employment and places of
14 employment.

15 (2) The term "national consensus standard" means
16 any occupational safety or health standard adopted
17 under a consensus method by a nationally recognized
18 standards producing organization.

19 (b) Except as provided in section 12 (h) of this Act,
20 each employer engaged in a business affecting commerce shall
21 comply with occupational safety and health standards pro-
22 mulgated by the Secretary. Such standards shall be promul-
23 gated, modified, or revoked by the Secretary by rule in
24 accordance with subsection (c) or (d).

25 (c) Whenever the Secretary is of the opinion that safety

1 and health standards should be prescribed for any trade,
2 craft, occupation, or type of business, industry, work place or
3 work environment for which no standards have previously
4 been prescribed pursuant to this Act, and for which an ap-
5 plicable national consensus standard exists, he shall be limited
6 to promulgating thereon, without regard to section 553, title
7 5, United States Code, such applicable national consensus
8 standard. Any such standard promulgated pursuant to this
9 subsection shall be known as an "adopted national consensus
10 standard".

11 (d) A rule or regulation to implement or modify a
12 standard promulgated under subsection (c), or to establish,
13 implement, or modify an occupational safety or health
14 standard other than those which are required to be promul-
15 gated in accordance with subsection (c) shall be promul-
16 gated, issued, modified, or repealed by the Secretary in
17 the following manner:

18 (1) Whenever the Secretary is of the opinion such
19 a rule should be prescribed, he shall appoint an advisory
20 committee under section 4 (b) of this Act, which shall
21 submit to him within two hundred and seventy days from
22 its appointment or within such longer period as may be
23 prescribed by the Secretary, its recommendations regard-
24 ing the rule to be prescribed, which recommendations
25 shall be published by the Secretary in the Federal Reg-

1 ister, either as part of a subsequent notice of hearing or
2 separately.

3 (2) After the submission of such recommendations,
4 the Secretary shall schedule and give notice of a hearing
5 on the recommendations of the advisory committee and
6 any other relevant subjects and issues. In the event that
7 the advisory committee fails to submit recommendations
8 within two hundred and seventy days from its appoint-
9 ment (or such longer period as the Secretary has pre-
10 scribed) he may schedule and give notice of a hearing on
11 any proposal relevant to the purpose for which the ad-
12 visory committee was appointed. In either case, notice of
13 the time and place of any such hearing shall be published
14 in the Federal Register thirty days prior to the hearing
15 and shall contain the recommendations of the advisory
16 committee or the proposal made in absence of such rec-
17 ommendation. Prior to the hearing interested persons
18 shall be afforded an opportunity to submit comments
19 upon the recommendations of the advisory committee
20 or other proposal. Only persons who have submitted such
21 comments shall have a right at such hearing to submit
22 oral or written evidence, data, views, or arguments.

23 (3) Upon the entire record before him, including
24 the advisory committee recommendations and any evi-
25 dence, data, views, and arguments submitted in connec-

tion with the hearing, the Secretary may issue a rule promulgating, modifying, or revoking an occupational safety and health standard. The rule shall not become effective for at least thirty days after publication in the Federal Register.

(4) Any person aggrieved or adversely affected by the action of the Secretary in issuing a rule under paragraph (3) may obtain a review of such action by the United States Court of Appeals for the District of Columbia by filing in such court within thirty days following the publication of such rule a petition praying that the action of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the action complained of was issued as provided in section 2412 of title 28, United States Code. Findings of fact by the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall like-

1 wise be conclusive if supported by substantial evidence
2 on the record considered as a whole. The court shall have
3 exclusive jurisdiction to affirm the action of the Secretary
4 or to set it aside, in whole or in part. The judgment of
5 the court shall be subject to review by the Supreme Court
6 of the United States upon certiorari or certification as
7 provided in section 1254 of title 28, United States Code.
8 The commencement of a proceeding under this subsec-
9 tion shall not, unless specifically ordered by the court,
10 operate as a stay of the Secretary's action in issuing the
11 rule.

12 (c) This Act shall not apply with respect to employ-
13 ment performed in a workplace within a foreign country or
14 within territory under the jurisdiction of the United States
15 other than the following: a State; Outer Continental Shelf
16 lands defined in the Outer Continental Shelf Lands Act;
17 Wake Island; Eniwetok Atoll; Kwajalein Atoll; Johnston
18 Island; and the Canal Zone.

19 ADMINISTRATION; ADVISORY COMMITTEES

20 SEC. 4. (a) In carrying out his responsibilities under
21 this Act, the Secretary is authorized to—

22 (1) use, with the consent of any Federal agency,
23 the services, facilities, and employees of such agency
24 with or without reimbursement, and with the consent of
25 any State or political subdivision thereof, accept and

1 use the services, facilities, and employees of the agencies
2 of such State or subdivision with or without reimburse-
3 ment; and

4 (2) employ experts and consultants or organizations
5 thereof as authorized by section 5109 of title 5, United
6 States Code, except that contracts for such employment
7 may be renewed annually; compensate individuals so
8 employed at rates not in excess of \$100 per diem, in-
9 cluding traveltime; and allow them while away from
10 their homes or regular places of business, travel ex-
11 penses (including per diem in lieu of subsistence) as
12 authorized by section 5703 of title 5, United States
13 Code, for persons in the Government service employed
14 intermittently, while so employed.

15 (b) The Secretary shall appoint advisory committees
16 to recommend occupational safety and health standards under
17 section 3 (d) (1) of this Act. Each such advisory committee
18 shall include among its members an equal number of persons
19 qualified by experience and affiliation to present the view-
20 point of the employers involved, and of persons similarly
21 qualified to present the viewpoint of the workers involved,
22 as well as one or more representatives of health or safety
23 agencies of the States, one or more representatives of pro-
24 fessional organizations of technicians or professionals special-
25 izing in occupational safety or health, and one or more rep-

1 representatives of nationally recognized standards-producing
2 organizations. An advisory committee may also include such
3 other persons as the Secretary may appoint who are qualified
4 by knowledge and experience to make a useful contribution
5 to the work of the committee, but the number of persons so
6 appointed to any advisory committee shall not exceed the
7 number appointed to such committee as representatives of
8 State agencies, professional organizations, and standards-pro-
9 ducing organizations. Persons appointed to advisory com-
10 mittees from private life shall be compensated in the same
11 manner as consultants or experts under subsection (a) (2)
12 of this section. The Secretary shall pay to any State which
13 is the employer of a member of the committee who is a rep-
14 resentative of the health or safety agency of that State, reim-
15 bursement sufficient to cover the actual cost to the State
16 resulting from such representative's membership on the
17 committee.

18 (c) (1) The Secretary shall appoint a National Advisory
19 Committee on Occupational Safety and Health (hereafter in
20 this subsection referred to as "Committee") consisting of
21 twelve members appointed without regard to the civil service
22 laws and composed equally of representatives of management,
23 labor, and the public. The Secretary shall designate one of
24 the public members as Chairman. The members shall be

10

1 selected upon the basis of their experience and competence
2 in the field of occupational safety and health.

3 (2) The Committee shall advise, consult with, and make
4 recommendations to, the Secretary on matters relating to
5 the administration of this Act. The Committee shall hold no
6 fewer than two meetings during each calendar year.

7 (3) The members of the Committee shall be compensated
8 in accordance with the provisions of subsection (a) (2) of
9 this section.

10 (4) The Secretary shall furnish to the Committee an
11 executive secretary and such secretarial, clerical, and other
12 services as are deemed necessary to the conduct of its business.

13 **INSPECTIONS AND INVESTIGATIONS**

14 **SEC. 5. (a)** In order to carry out the purposes of this
15 Act, the Secretary, upon presenting appropriate credentials
16 to the owner, operator, or agent in charge, is authorized—

17 (1) to enter upon at reasonable times any factory,
18 plant, establishment, construction site, or other area,
19 workplace, or environment where work is performed by
20 an employee of an employer or on a contract described
21 in section 10 (a) ; and

22 (2) to inspect and investigate during regular work-
23 ing hours and at other reasonable times, and within
24 reasonable limits and in a reasonable manner, any such
25 area, workplace, or environment, and all pertinent condi-

1 tions, structures, machines, apparatus, devices, equip-
2 ment, and materials therein, and to question any such
3 employee.

4 (b) For the purpose of carrying out his duties under
5 this Act the Secretary may delegate his authority under this
6 section to any agency of the Federal Government with or
7 without reimbursement, and, with its consent and with or
8 without reimbursement and under conditions the Secretary
9 may prescribe, to any appropriate State agency or agencies
10 designated by the Governor of the State.

11 ADMINISTRATIVE ENFORCEMENT

12 SEC. 6. (a) (1) If, upon inspection or investigation,
13 the Secretary determines that any employer has violated any
14 standard promulgated under section 3 or that any person has
15 violated any regulation prescribed under subsection (b) of
16 this section or any contractual requirement of section 10 (a),
17 he shall hold a hearing (in accordance with section 554 of
18 title 5, United States Code, but without regard to subsec-
19 tion (a) (3) of such section), and shall issue such orders,
20 and make such decisions, based upon findings of fact, as are
21 deemed to be necessary to enforce such standard, regulation,
22 or requirement. The Secretary shall give such person the in-
23 formation required by section 554 (b) of such title at least 15
24 days prior to hearing. The Secretary shall have the power
25 to issue orders requiring the attendance and testimony of

1 witnesses and the production of evidence under oath. Wit-
2 nesses shall be paid the same fees and mileage that are
3 paid witnesses in the courts of the United States. In case of
4 contumacy, failure, or refusal of any person to obey such
5 an order, any district court of the United States or the
6 United States courts of any territory or possession, within
7 the jurisdiction of which the inquiry is carried on, or within
8 the jurisdiction of which such person is found, or resides or
9 transacts business, upon the application by the Secretary,
10 shall have jurisdiction to issue to such person an order
11 requiring such person to appear to produce evidence if, as,
12 and when so ordered, and to give testimony relating to the
13 matter under investigation or in question; and any failure
14 to obey such order of the court may be punished by said
15 court as a contempt thereof.

16 (2) If an inspection or investigation discloses (A) that
17 an employer has violated a standard promulgated under sec-
18 tion 3 or that any person has violated a contractual require-
19 ment of section 10 (a), and (B) that conditions or practices
20 in such place of employment are such that a danger exists
21 which could reasonably be expected to cause death or serious
22 physical harm immediately or before the imminence of such
23 danger can be eliminated, the Secretary may (notwith-
24 standing the provisions of paragraph (1) of this subsection)
25 issue an order providing for the immediate cessation of such

1 violation and for the prohibition of the employment of any
2 individuals in locations or under conditions where such
3 violations exist, except to correct or remove the violation.
4 Such order may remain in effect during the pendency of
5 any proceeding under paragraph (1) of this subsection.

6 (b) Each employer shall make, keep, and preserve,
7 and make available to the Secretary such records concern-
8 ing the requirements of section 3 of this Act, and shall make
9 reports therefrom to the Secretary, as he may prescribe
10 by regulation as necessary or appropriate for the enforce-
11 ment of this Act.

12 JUDICIAL PROCEEDINGS

13 SEC. 7. (a) The district courts of the United States
14 shall have jurisdiction to enforce (by restraining order, in-
15 junction, or otherwise) any order of the Secretary under
16 section 6 (a) (1) of this Act. Any person aggrieved by an
17 order issued under section 6 (a) (1) may obtain judicial re-
18 view thereof based upon the record before the Secretary.

19 (b) (1) The Secretary shall have power, upon issuance
20 of an order under section 6 (a) (2), to petition any United
21 States district court, within any district wherein such vio-
22 lation is alleged to have occurred or wherein the person to
23 whom the order was issued resides or transacts business,
24 for appropriate temporary relief. Upon the filing of any

1 such petition the court shall have jurisdiction to grant to the
2 Secretary such temporary relief as it deems just and proper:
3 *Provided*, That such temporary relief shall be effective for no
4 longer than five days and will become void at the expiration
5 of such period.

6 (2) If the Secretary arbitrarily or capriciously or with-
7 out reasonable cause issues an order under section 6 (a) (2)
8 and the person to whom the order is directed is injured in
9 his business or property by reason of such order, such person
10 may bring an action against the United States in the Court
11 of Claims in which he may recover the damages he has
12 sustained, including reasonable court costs and attorneys'
13 fees.

14 CONFIDENTIALITY OF TRADE SECRETS

15 SEC. 8. In connection with any proceeding under this
16 Act no witness or any other person shall be required to
17 divulge trade secrets or secret processes.

18 PENALTIES

19 SEC. 9. (a) Any employer who violates any standard
20 promulgated under section 3 of this Act or any person who
21 violates any regulation prescribed under section 6 (b) or
22 any contractual requirement of section 10 (a), may be as-
23 sessed by the Secretary, pursuant to an order issued under
24 section 6 (a) (1) of this Act, a civil penalty of not more than
25 \$1,000 for each violation. Each violation shall be a separate

1 offense. When the violation is of a continuing nature, each
2 day during which it continues after a reasonable time speci-
3 fied in an order issued under section 6 (a) (1) shall constitute
4 a separate offense except during the time a review of the
5 order under section 6 (a) (1) may be taken, or such review
6 is pending, and during the time allowed in the order under
7 section 6 (a) (1) for correction. The Secretary may compro-
8 mise, mitigate, or settle any claim for civil penalties. In
9 assessing the penalty, consideration shall be given to the
10 appropriateness of the penalty to the size of the business of
11 the person charged and the gravity of the violation.

12 (b) Any person who willfully violates or fails or refuses
13 to comply with any order issued under section 6 (a) (1) of
14 this Act shall be guilty of a misdemeanor, and upon con-
15 viction shall be punished by a fine of not more than \$5,000
16 or by imprisonment for not more than six months, or by both
17 such fine and imprisonment; except that if the conviction
18 is for a violation committed after a first conviction of such
19 person, punishment shall be by a fine of not more than
20 \$10,000 or by imprisonment for not more than one year,
21 or by both such fine and imprisonment.

22 (c) Any person who forcibly assaults, resists, opposes,
23 impedes, intimidates, or interferes with any person while
24 engaged in or on account of the performance of inspections
25 or investigatory duties under this Act shall be fined not

1 more than \$5,000 or imprisoned not more than three years,
2 or both. Whoever, in the commission of any such acts, uses
3 a deadly or dangerous weapon, shall be fined not more than
4 \$10,000 or imprisoned not more than ten years, or both.
5 Whoever kills any person while engaged in or on account of
6 the performance of inspecting or investigating duties under
7 this Act shall be punished by imprisonment for any term of
8 years or for life.

9 GOVERNMENT CONTRACTS

10 SEC. 10. (a) Each contract exceeding \$2,500 and
11 requiring or involving the employment of any person (1)
12 to which the United States or any agency or instrumentality
13 thereof, or the District of Columbia is a party, (2) which
14 is made for or on behalf of the United States, any agency
15 or instrumentality thereof, or the District of Columbia,
16 or (3) which is financed in whole or in part by loans or
17 grants from, or loans insured or guaranteed by, the United
18 States or any agency or instrumentality of the United States,
19 shall include the requirement that no part of such contract
20 (or any subcontract thereunder) will be performed in any
21 place or under any conditions which do not meet the applica-
22 ble occupational safety and health standards. The applicable
23 occupational safety and health standards shall be the stand-
24 ards promulgated by the Secretary under section 3 of this
25 Act, except that, to the extent that the contract will be per-

1 formed in a State in which there is in effect a State plan
2 approved under section 12 (d) which provides for the de-
3 velopment and enforcement of safety and health standards
4 relating to one or more occupational safety or health issues,
5 the applicable occupational safety and health standards relat-
6 ing to such issues shall be those developed and enforced under
7 the State plan rather than those promulgated by the Secre-
8 tary under section 3.

9 (b) In promulgating standards under section 3 of this
10 Act, the Secretary shall, to the extent feasible, conform such
11 standards to those occupational safety and health standards
12 established under other laws administered by him.

13 (c) In addition to the remedies otherwise provided in
14 this Act, the Secretary may declare ineligible to receive any
15 contract described in subsection (a) of this section any per-
16 son or firm, or any firm, corporation, partnership, or associa-
17 tion in which such person or firm has a controlling interest,
18 which is found to have disregarded its obligations under this
19 section until such person or firm has satisfied the Secretary
20 that it will comply with the requirements of this section.

21 (d) In addition to the remedies otherwise provided in
22 this Act, the Secretary may recommend to the appropriate
23 contracting agency that such agency cancel, terminate, sus-
24 pend, or cause to be canceled, or suspended, any contract

1 made by any contracting agency for the failure of the
2 contractor to comply with an order of the Secretary issued
3 under section 6 (a) (1) of this Act for the breach or violation
4 by such employer of the requirements under subsection (a)
5 of this section.

6 **VARIATIONS, TOLERANCES, AND EXEMPTIONS**

7 **SEC. 11.** The Secretary may provide such reasonable
8 limitations and may make such rules and regulations allow-
9 ing reasonable variations, tolerances, and exemptions to and
10 from any or all provisions of this Act as he may find neces-
11 sary and proper in the public interest or to avoid serious
12 impairment of the conduct of Government business. The
13 Secretary shall keep an appropriately indexed record of all
14 variations, tolerances, and exemptions granted under this
15 section, which shall be open for public inspection.

16 **EFFECTIVE DATE: FEDERAL-STATE RELATIONSHIP**

17 **SEC. 12.** (a) (1) Except as otherwise provided in this
18 section, this Act shall be effective on the first day of the
19 first month after the date of its enactment.

20 (2) Sections 6, 7, 9, and standards promulgated under
21 section 3 shall not take effect until July 1, 1970. Section 10
22 shall not apply to contracts entered into before July 1, 1970.

23 (b) Nothing in this Act shall be deemed to prevent any
24 State agency or court from asserting jurisdiction over any

1 occupational safety or health issue with respect to which
2 no standard is in effect under section 3.

3 (c) Any State which, at any time, desires to assume
4 responsibility for development and enforcement in such State
5 of occupational safety or health standards relating to any
6 occupational safety or health issue with respect to which
7 a Federal standard has been promulgated under section 3
8 shall submit a State plan for the development of such stand-
9 ards and their enforcement.

10 (d) The Secretary shall approve the plan submitted
11 by a State under subsection (c), or any modification thereof,
12 if such plan—

13 (1) designates a State agency or agencies as the
14 agency or agencies responsible for administering the plan
15 throughout the State,

16 (2) provides for the development and enforcement
17 of safety and health standards relating to one or more
18 safety or health issues, which standards are or will be
19 substantially as effective in providing safe and healthful
20 employment and places of employment as the standards
21 promulgated under section 3 which relate to the same
22 issues,

23 (3) provides for the right of entry and inspection of
24 all workplaces subject to the Act,

1 (4) contains assurances that such agency or agen-
2 cies have or will have the legal authority and qualified
3 personnel necessary for the enforcement of such stand-
4 ards,

5 (5) gives assurances that such State will devote
6 adequate funds to the administration and enforcement of
7 such standards, and

8 (6) provides that the State agency will make such
9 reports to the Secretary in such form and containing
10 such information, as the Secretary shall from time to
11 time require.

12 (c) If the Secretary rejects a plan submitted under
13 subsection (d), he shall afford the State submitting the plan,
14 **due notice and opportunity for a hearing.**

15 (f) The Secretary shall, on the basis of reports sub-
16 mitted by the State agency and his own inspections, make a
17 continuing evaluation of the manner in which each State
18 having a plan approved under this section is carrying out
19 such plan. Whenever the Secretary finds, after affording due
20 notice and opportunity for a hearing, that in the administra-
21 tion of the State plan there is a failure to comply substantially
22 with any provision of the State plan (or any assurance
23 contained therein), he shall notify the State agency of his
24 withdrawal of approval of such plan and upon receipt of such
25 notice such plan shall cease to be in effect.

1 (g) The State may obtain a review of a decision of the
2 Secretary withdrawing approval of or rejecting its plan
3 by the United States Court of Appeals for the District of
4 Columbia by filing in such court within thirty days following
5 receipt of notice of such decision a petition praying that the
6 action of the Secretary be modified or set aside in whole or
7 in part. A copy of such petition shall forthwith be served
8 upon the Secretary, and thereupon the Secretary shall certify
9 and file in the court the record upon which the decision com-
10 plained of was issued as provided in section 2112 of title
11 28, United States Code. Findings of fact by the Secretary,
12 if supported by substantial evidence on the record considered
13 as a whole, shall be conclusive; but the court, for good cause
14 shown, may remand the case to the Secretary to take further
15 evidence, and the Secretary may thereupon make new or
16 modified findings of fact and may modify his previous action
17 and shall certify to the court the record of the further pro-
18 ceedings. Such new or modified findings of fact shall like-
19 wise be conclusive if supported by substantial evidence on
20 the record considered as a whole. The court shall have exclu-
21 sive jurisdiction to affirm the action of the Secretary or
22 to set it aside, in whole or in part. The judgment of the
23 court shall be subject to review by the Supreme Court of the
24 United States upon certiorari or certification as provided
25 in section 1254 of title 28, United States Code.

1 (h) The provisions of sections 5, 6, 7, 9, and standards
2 promulgated under section 3 of this Act shall not apply with
3 respect to any occupational safety or health issue in a State
4 in which there is in effect a State plan approved under
5 subsection (d) which provides for the development and
6 enforcement of health and safety standards relating to such
7 issue: *Provided*, That nothing in this subsection (h) shall
8 prevent the Secretary from making inspections for the sole
9 purpose of making the continuing evaluation provided for in
10 the first sentence of subsection (i) of this section.

11 RELATIONSHIP TO OTHER FEDERAL PROGRAMS

12 SEC. 13. Nothing in this Act shall authorize the Secre-
13 tary to regulate, or shall apply to, working conditions of
14 employees with respect to whom another Federal agency
15 has statutory authority to prescribe or enforce standards or
16 regulations affecting occupational safety or health.

17 FEDERAL AGENCY SAFETY PROGRAMS AND
18 RESPONSIBILITIES

19 SEC. 14. (a) It shall be the responsibility of the head
20 of each Federal agency to establish and maintain an effective
21 and comprehensive occupational safety and health program
22 which is consistent with the standards promulgated by the
23 Secretary under section 3. The head of each agency shall—

24 (1) provide safe and healthful places and condi-

1 tions of employment, consistent with the standards set
2 under section 3;

3 (2) acquire, maintain, and require the use of safety
4 equipment, personal protective equipment, and devices
5 reasonably necessary to protect employees;

6 (3) keep adequate records of all occupational acci-
7 dents and illnesses for proper evaluation and necessary
8 corrective action; and

9 (4) make an annual report to the President with
10 respect to occupational accidents and injuries and the
11 agency's program under this section. Such report shall
12 include any report submitted under section 7902 (e) (2)
13 of title 5, United States Code.

14 (b) The President shall transmit annually to the Senate
15 and House of Representatives a report of the activities of
16 each Federal agency under this section.

17 RESEARCH AND RELATED ACTIVITIES

18 SEC. 15. (a) (1) The Secretary of Health, Education,
19 and Welfare, after consultation with the Secretary and with
20 other appropriate Federal departments or agencies, shall
21 conduct (directly or by grants or contracts) research, experi-
22 ments, and demonstrations relating to occupational safety
23 and health.

24 (2) The Secretary of Health, Education, and Welfare

1 shall from time to time consult with the Secretary in order
2 to develop specific plans for such research, demonstrations,
3 and experiments as are necessary to produce criteria enabling
4 the Secretary to meet his responsibility for the formulation
5 of safety and health standards under this Act; and the Sec-
6 retary of Health, Education, and Welfare, on the basis of
7 such research, demonstrations, and experiments and any
8 other information available to him, shall develop such
9 criteria.

10 (b) The Secretary of Health, Education, and Welfare
11 is authorized to make inspections as provided in section 5
12 of this Act in order to carry out his functions and responsi-
13 bilities under this section.

14 (c) The Secretary of Labor is authorized to enter into
15 contracts, agreements, or other arrangements with appropri-
16 ate public agencies or private organizations for the purpose
17 of conducting studies related to his responsibilities for estab-
18 lishing and applying occupational safety and health standards
19 under section 3 of this Act. In carrying out his responsibili-
20 ties under this subsection, the Secretary shall consult with the
21 Secretary of Health, Education, and Welfare in order to
22 avoid any duplication of efforts under this section.

23 (d) The Secretary, after consultation with the Secretary
24 of Health, Education, and Welfare, and with the appropriate
25 official in each State as duly designated by such State,

1 shall establish such accident and health reporting systems
2 for employers and for the States as he deems necessary to
3 carry out his responsibilities under this Act.

4 TRAINING AND EMPLOYEE EDUCATION

5 SEC. 16. (a) The Secretary of Health, Education, and
6 Welfare, after consultation with the Secretary of Labor and
7 with other appropriate Federal departments and agencies,
8 shall conduct, directly or by grants or contracts, (1) educa-
9 tion programs to provide an adequate supply of qualified
10 personnel to carry out the purposes of this Act, and (2) in-
11 formational programs on the importance of and proper use of
12 adequate safety equipment.

13 (b) The Secretary is also authorized to conduct (di-
14 rectly or by grants or contracts) short-term training of per-
15 sonnel engaged in work related to his responsibilities under
16 this Act.

17 (c) The Secretary, in consultation with the Secretary
18 of Health, Education, and Welfare, shall provide for the
19 establishment and supervision of programs for the education
20 and training of employers and employees in the recognition,
21 avoidance, and prevention of unsafe or unhealthful working
22 conditions in employments covered by this Act, and to con-
23 sult with and advise employers as to effective means of pre-
24 venting occupational injuries and illnesses.

GRANTS TO THE STATES

2 Sec. 17. (a) The Secretary is authorized, during the
3 fiscal year ending June 30, 1969, and the two succeeding
4 fiscal years, to make grants to the States to assist them (1)
5 in identifying their needs and responsibilities in the area of
6 occupational safety and health, (2) in developing State
7 plans under section 12, or (3) in developing plans for—

8 (A) establishing systems for the collection of infor-
9 mation concerning the nature and frequency of occupa-
10 tional injuries and diseases;

11 (B) increasing the expertise and enforcement capa-
12 bilities of their personnel engaged in occupational safety
13 and health programs; or

14 (C) otherwise improving the administration and
15 enforcement of State occupational safety and health
16 laws, including standards thereunder, consistent with the
17 objectives of this Act.

18 (b) The Secretary is authorized, during the fiscal year
19 ending June 30, 1969, and the two succeeding fiscal years, to
20 make grants to the States for experimental and demonstration
21 projects consistent with the objectives set forth in subsection
22 (a) of this section.

 (c) The Governor of the State shall designate the
23 appropriate State agency, or agencies, for receipt of any
24 grant made by the Secretary under this section.

(d) Any State agency, or agencies, designated by the Governor of the State, desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may be up to 90 per centum of the State's total cost.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 12 of this Act. The Federal share for each State grant under this subsection may be up to 50 per centum of the State's total cost.

(h) Prior to June 30, 1971, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to Congress, describing the experience under the program and making any recommendations as he may deem appropriate.

EFFECT ON OTHER LAWS

SEC. 18. (a) Nothing in this Act shall be construed as repealing or modifying in any way any other Federal laws prescribing safety and health requirements

1 (b) Nothing in this Act shall be construed or held to
2 supersede or in any manner affect any workmen's com-
3 pensation law or to enlarge or diminish or affect in any other
4 manner the common law or statutory rights, duties, or liabilities
5 of employers and employees under any law with re-
6 spect to injuries, occupational or other diseases, or death
7 of employees arising out of, or in the course of employment.

8 AUDITS

9 SEC. 19. (a) Each recipient of a grant under this Act
10 shall keep such records as the Secretary shall prescribe, in-
11 cluding records which fully disclose the amount and disposi-
12 tion by such recipient of the proceeds of such grant, the
13 total cost of the project or undertaking in connection with
14 which such grant is made or used, and the amount of that
15 portion of the cost of the project or undertaking supplied
16 by other sources, and such other records as will facilitate an
17 effective audit.

18 (b) The Secretary and the Comptroller General of the
19 United States, or any of their duly authorized representa-
20 tives, shall have access for the purpose of audit and examina-
21 tion to any books, documents, papers, and records of the
22 recipients of any grant under this Act that are pertinent to
23 any such grant.

REPORTS

1
2 SEC. 20. Within one hundred and twenty days following
3 the convening of the first session of each Congress, the Sec-
4 retary and the Secretary of Health, Education, and Welfare
5 shall jointly prepare and submit to the President for trans-
6 mittal to the Congress a biennial report upon the subject
7 matter of this Act, the progress concerning the achievement
8 of its purposes, the needs and requirements in the field of
9 occupational safety and health, and any other relevant infor-
10 mation, and including any recommendations they may deem
11 appropriate.

APPROPRIATIONS

12
13 SEC. 21. There are authorized to be appropriated to
14 carry out this Act not to exceed \$10,000,000 for the fiscal
15 year ending June 30, 1969, not to exceed \$20,000,000 for
16 the fiscal year ending June 30, 1970, and not to exceed
17 \$22,000,000 for the fiscal year ending June 30, 1971.

DEFINITIONS

18
19 SEC. 22. For the purposes of this Act:

20 (1) The term "Secretary" means the Secretary of
21 Labor or his duly authorized representative.

22 (2) The term "commerce" means trade, traffic,
23 commerce, transportation, or communication among the

several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States, or between points in the same State but through a point outside thereof.

(3) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized groups of persons.

(4) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(5) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

SEPARABILITY

SEC. 23. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

91ST CONGRESS
1ST SESSION

H. R. 3809

IN THE HOUSE OF REPRESENTATIVES

JANUARY 16, 1969

Mr. O'HARA (for himself, Mr. ADDABBO, Mr. BINGHAM, Mr. BROWN of California, Mr. BURTON of California, Mr. CAREY, Mr. CONYERS, Mr. DENT, Mr. ECKHARDT, Mr. EDWARDS of California, Mr. EILBERG, Mr. FEIGHAN, Mr. WILLIAM D. FORD, Mr. GALLAGHER, Mr. GILBERT, Mr. HAWKINS, Mr. HECHLER of West Virginia and Mr. HOWARD) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Occupational Safety and
- 4 Health Act of 1969".

1 CONGRESSIONAL FINDINGS AND PURPOSE

2 SEC. 2. (a) The Congress finds that personal injuries
3 and illnesses arising out of work situations which result in
4 death or disability impose a substantial burden upon, and are
5 a hindrance to, interstate commerce in terms of lost produc-
6 tion, wage loss, medical expenses, and disability compensa-
7 tion payments.

8 (b) The Congress declares it to be the purpose and
9 policy, through the exercise by Congress of its powers to
10 regulate commerce among the several States and with foreign
11 nations and to provide for the general welfare, to assure so
12 far as possible every working man and woman in the Nation
13 safe and healthful working conditions—

14 (1) by establishing mandatory occupational safety
15 and health standards applicable to businesses affecting
16 commerce;

17 (2) by providing for the effective enforcement of
18 such safety and health standards;

19 (3) by providing for research relating to occupa-
20 tional safety and health;

21 (4) by providing for training programs to increase
22 and improve personnel engaged in the field of occupa-
23 tional safety and health;

24 (5) by more clearly delineating the responsibilities

1 of the Federal Government and the States in their ac-
2 tivities related to occupational safety and health;

3 (6) by providing grants to the States to assist them
4 in identifying their needs and responsibilities in the
5 area of occupational safety and health, to develop plans
6 in accordance with the provisions of this Act, and to
7 conduct experimental and demonstration projects in
8 connection therewith; and

9 (7) by providing for appropriate accident and
10 health reporting procedures which will help achieve
11 the objectives of this Act.

12 STANDARDS

13 SEC. 3. (a) For purposes of this section:

14 (1) The term "occupational safety and health stand-
15 ard" means a standard which requires conditions, or the
16 adoption or use of one or more practices, means, methods,
17 operations, or processes, reasonably necessary to provide
18 safe or healthful employment and places of employment.

19 (2) The term "national consensus standard" means
20 any occupational safety or health standard adopted under
21 a consensus method by a nationally recognized standards
22 producing organization.

23 (3) The term "established Federal standard" means
24 any occupational safety or health standard already estab-

1 lished by any agency of the United States, or contained in
2 any Act of Congress in force on the date of enactment of
3 this Act, but before the exercise by the Secretary, with
4 respect to the issues covered by such standards, of his
5 **authority under section 13.**

6 (b) Except as provided in section 12 (h) of this Act,
7 each employer engaged in a business affecting commerce shall
8 comply with occupational safety and health standards pro-
9 mulgated by the Secretary. Such standards shall be promul-
10 gated, modified or revoked by the Secretary by rule in
11 accordance with subsection (c), (d), (e), or (f).

12 (c) The Secretary may by rule promulgate any occu-
13 pational safety and health standard which is a national con-
14 sensus standard. If the nationally recognized standards pro-
15 ducing organization which adopted the national consensus
16 standard upon which an occupational safety and health stand-
17 ard promulgated under this subsection was based modifies or
18 revokes such national consensus standard under a consensus
19 method, the Secretary may by rule modify or revoke the
20 standard promulgated by him to the same extent. Section 553
21 of title 5, United States Code, shall not apply to any rule
22 issued under this subsection.

23 (d) The Secretary may by rule promulgate any occupa-
24 tional safety and health standard which is an established

1 Federal standard. Section 553 of title 5, United States Code,
2 shall not apply to any rule issued under this subsection.
3 Subsection (f) shall apply to the modification or revocation
4 of any standard promulgated under this subsection.

5 (e) The Secretary may by rule promulgate an interim
6 occupational safety and health standard which is a standard
7 proposed by a nationally recognized standards producing
8 organization by other than a consensus method, whenever he
9 finds (and incorporates the finding and a brief statement of
10 the reasons therefor in the rule issued) that such rule making
11 without the notice and procedures provided by subsection
12 (f) of this section and by section 553 of title 5, United
13 States Code, is necessary in the public interest. Such a stand-
14 ard may remain in effect for not more than six months from
15 its effective date, except that the Secretary may extend such
16 interim standard for an additional twelve months if at the
17 time he originally promulgates such a standard he com-
18 mences (by appointing an advisory committee) a proceeding
19 under subsection (f) dealing with the same subject matter
20 as the interim standard, and such additional occupational
21 safety or health issues as he deems relevant. If an interim
22 standard is promulgated under this subsection, no additional
23 standard dealing with the same subject may be promulgated

1 except in the manner required by subsection (c), (e), or
2 (f) of this section.

3 (f) The Secretary may, by rule, promulgate, modify
4 or revoke any occupational safety and health standard in the
5 following manner:

6 (1) Whenever the Secretary is of the opinion such
7 a rule should be prescribed, he shall appoint an advisory
8 committee under section 4 (b) of this Act, which shall
9 submit to him within two hundred and seventy days from
10 its appointment or within such longer period as may be
11 prescribed by the Secretary, its recommendations regard-
12 ing the rule to be prescribed, which recommendations
13 shall be published by the Secretary in the Federal Reg-
14 ister, either as part of a subsequent notice of hearing or
15 separately.

16 (2) After the submission of such recommendations,
17 the Secretary shall schedule and give notice of a hearing
18 on the recommendations of the advisory committee and
19 any other relevant subjects and issues. In the event that
20 the advisory committee fails to submit recommendations
21 within two hundred and seventy days from its appoint-
22 ment (or such longer period as the Secretary has pre-
23 scribed) he may schedule and give notice of a hearing on
24 any proposal relevant to the purpose for which the ad-
25 visory committee was appointed. In either case, notice of

1 the time and place of any such hearing shall be published
2 in the Federal Register thirty days prior to the hearing
3 and shall contain the recommendations of the advisory
4 committee or the proposal made in absence of such rec-
5 ommendation. Prior to the hearing interested persons
6 shall be afforded an opportunity to submit comments
7 upon the recommendations of the advisory committee
8 or other proposal. Only persons who have submitted such
9 comments shall have a right at such hearing to submit
10 oral or written evidence, data, views, or arguments.

11 (3) Upon the entire record before him, including
12 the advisory committee recommendations and any evi-
13 dence, data, views, and arguments submitted in connec-
14 tion with the hearing, the Secretary may issue a rule
15 promulgating, modifying, or revoking an occupational
16 safety and health standard. The rule shall not become
17 effective for at least thirty days after publication in the
18 Federal Register.

19 (g) This Act shall not apply with respect to employ-
20 ment performed in a workplace within a foreign country or
21 within territory under the jurisdiction of the United States
22 other than the following: a State; Outer Continental Shelf
23 lands defined in the Outer Continental Shelf Lands Act;
24 American Samoa; Wake Island; Eniwetok Atoll; Kwajalein
25 Atoll; Johnston Island; and the Canal Zone.

1 ADMINISTRATION: ADVISORY COMMITTEES

2 SEC. 4. (a) In carrying out his responsibilities under
3 this Act, the Secretary is authorized to—

4 (1) use, with the consent of any Federal agency,
5 the services, facilities, and employees of such agency
6 with or without reimbursement, and with the consent of
7 any State or political subdivision thereof, accept and
8 use the services, facilities, and employees of the agencies
9 of such State or subdivision with or without reimburse-
10 ment; and

11 (2) employ experts and consultants or organizations
12 thereof as authorized by section 3109 of title 5, United
13 States Code, except that contracts for such employment
14 may be renewed annually; compensate individuals so
15 employed at rates not in excess of \$100 per diem, in-
16 cluding traveltime; and allow them while away from
17 their homes or regular places of business, travel expenses
18 (including per diem in lieu of subsistence) as author-
19 ized by section 5703 of title 5, United States Code, for
20 persons in the Government service employed intermit-
21 tently, while so employed.

22 (b) The Secretary shall appoint advisory committees
23 to recommend occupational safety and health standards under
24 section 3 (f) (1) of this Act. Each such advisory committee
25 shall include among its members an equal number of persons

1 qualified by experience and affiliation to present the view-
2 point of the employers involved, and of persons similarly
3 qualified to present the viewpoint of the workers involved,
4 as well as one or more representatives of health or safety
5 agencies of the States, one or more representatives of pro-
6 fessional organizations of technicians or professionals
7 specializing in occupational safety or health, and one
8 or more representatives of nationally recognized standards
9 producing organizations. An advisory committee may also
10 include such other persons as the Secretary may appoint
11 who are qualified by knowledge and experience to make a
12 useful contribution to the work of the committee, but the
13 number of persons so appointed to any advisory committee
14 shall not exceed the number appointed to such committee
15 as representatives of State agencies, professional organiza-
16 tions, and standards producing organizations. Persons ap-
17 pointed to advisory committees from private life shall be
18 compensated in the same manner as consultants or experts
19 under subsection (a) (2) of this section. The Secretary shall
20 pay to any State which is the employer of a member of the
21 committee who is a representative of the health or safety
22 agency of that State, reimbursement sufficient to cover the
23 actual cost to the State resulting from such representative's
24 membership on the committee.

1 (c) (1) The Secretary shall appoint a National Advi-
2 sory Committee on Occupational Safety and Health (here-
3 after in this subsection referred to as "Committee")
4 consisting of sixteen members appointed without regard to
5 the civil service laws and composed equally of representa-
6 tives of management, labor, occupational safety and health
7 professions, and the public. The Secretary shall designate
8 one of the public members as Chairman. The members shall
9 be selected upon the basis of their experience and competence
10 in the field of occupational safety and health.

11 (2) The Committee shall advise, consult with, and
12 make recommendations to, the Secretaries of Labor and
13 Health, Education, and Welfare on matters relating to the
14 administration of this Act. The Committee shall hold no
15 fewer than two meetings during each calendar year.

16 (3) The members of the Committee shall be compensated
17 in accordance with the provisions of subsection (a) (2) of
18 this section.

19 (4) The Secretary shall furnish to the Committee an
20 executive secretary and such secretarial, clerical, and other
21 services as are deemed necessary to the conduct of its business.

22 INSPECTIONS AND INVESTIGATIONS

23 SEC. 5. (a) In order to carry out the purposes of this
24 Act, the Secretary, upon presenting appropriate credentials
25 to the owner, operator, or agent in charge, is authorized—

1 (1) to enter upon at reasonable times any factory,
2 plant, establishment, mine, construction site, or other
3 area, workplace, or environment where work is per-
4 formed by an employee of an employer or on a contract
5 described in section 10 (a) ; and

6 (2) to inspect and investigate during regular work-
7 ing hours and at other reasonable times, and within
8 reasonable limits and in a reasonable manner, any such
9 area, workplace, or environment, and all pertinent condi-
10 tions, structures, machines, apparatus, devices, equip-
11 ment, and materials therein, and to question any such
12 employee.

13 (b) For the purpose of carrying out his duties under
14 this Aot, the Secretary may delegate his authority under this
15 section to any agency of the Federal Government with or
16 without reimbursement, and, with its consent and with or
17 without reimbursement and under conditions the Secretary
18 may prescribe, to any appropriate State agency or agencies
19 designated by the Governor of the State.

20 SEC. 6. (a) (1) If, upon inspection or investigation,
21 the Secretary determines that any employer has violated any
22 standard promulgated under section 3 or that any person has
23 violated any regulation prescribed under subsection (b) of
24 this section or any contractual requirement of section 10 (a) ,
25 he shall hold a hearing (in accordance with section 554 of

1 title 5, United States Code, but without regard to subsec-
2 tion (a) (3) of such section), and shall issue such orders.
3 and make such decisions, based upon findings of fact, as are
4 deemed to be necessary to enforce such standard, regulation,
5 or requirement. The Secretary shall give such person the in-
6 formation required by section 554 (b) of such title at least 15
7 days prior to hearing. The Secretary shall have the power
8 to issue orders requiring the attendance and testimony of
9 witnesses and the production of evidence under oath. Wit-
10 nesses shall be paid the same fees and mileage that are
11 paid witnesses in the courts of the United States. In case of
12 contumacy, failure, or refusal of any person to obey such
13 an order, any district court of the United States or the
14 United States courts of any territory or possession, within
15 the jurisdiction of which the inquiry is carried on, or within
16 the jurisdiction of which such person is found, or resides or
17 transacts business, upon the application by the Secretary,
18 shall have jurisdiction to issue to such person an order
19 requiring such person to appear to produce evidence if, as,
20 and when so ordered, and to give testimony relating to the
21 matter under investigation or in question; and any failure
22 to obey such order of the court may be punished by said
23 court as a contempt thereof.

24 (2) If an inspection or investigation discloses (A) that
25 an employer has violated a standard promulgated under sec-

tion 3 or that any person has violated a contractual requirement of section 10 (a), and (B) that conditions or practices in such place of employment are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, the Secretary may (notwithstanding the provisions of paragraph (1) of this subsection) issue an order providing for the immediate cessation of such violation and for the prohibition of the employment of any individuals in locations or under conditions where such violations exist, except to correct or remove the violation. Such order may remain in effect during the pendency of any proceeding under paragraph (1) of this subsection.

(b) Each employer shall make, keep, and preserve, and make available to the Secretary such records concerning the requirements of section 3 of this Act, and shall make reports therefrom to the Secretary, as he may prescribe by regulation or order as necessary or appropriate for the enforcement of this Act.

JUDICIAL PROCEEDINGS

SEC. 7. (a) The district courts of the United States shall have jurisdiction to enforce (by restraining order, injunction, or otherwise) any order of the Secretary under section 6 (a) of this Act. Any person aggrieved by an order

1 issued under section 6(a) may obtain review thereof by
2 such courts based upon the record before the Secretary.

3 (b) If the Secretary arbitrarily or capriciously issues an
4 order under section 6(a) (2) and the person to whom the
5 order is directed is injured in his business or property by
6 reason of such order, such person may bring an action against
7 the United States in the Court of Claims in which he may
8 recover the damages he has sustained.

9 **CONFIDENTIALITY OF TRADE SECRETS**

10 SEC. 8. In connection with any proceeding under this
11 Act no witness or any other person shall be required to
12 divulge trade secrets or secret processes.

13 **PENALTIES**

14 SEC. 9. (a) Any employer who violates any standard
15 promulgated under section 3 of this Act or any person who
16 violates any regulation prescribed under section 6 or
17 any contractual requirement of section 10(a), may be as-
18 sessed by the Secretary, pursuant to an order issued under
19 section 6(a) (1) of this Act, a civil penalty of not more than
20 \$1,000 for each violation. Each violation shall be a separate
21 offense. When the violation is of a continuing nature, each
22 day during which it continues after a reasonable time speci-
23 fied in an order issued under section 6(a) (1) shall constitute
24 a separate offense except during the time a review of the
25 order under section 6(a) (1) may be taken, or such review

1 is pending, and during the time allowed in the order under
2 section 6 (a) (1) for correction. The Secretary may compro-
3 mise, mitigate, or settle any claim for civil penalties. In as-
4 sessing the penalty, consideration shall be given to the
5 appropriateness of the penalty to the size of the business of
6 the person charged and the gravity of the violation.

7 (b) Any person who willfully violates or fails or refuses
8 to comply with any order issued under section 6 (a)
9 of this Act shall be guilty of a misdemeanor, and upon con-
10 viction shall be punished by a fine of not more than \$5,000
11 or by imprisonment for not more than six months, or by both
12 such fine and imprisonment; except that if the conviction
13 is for a violation committed after a first conviction of such
14 person, punishment shall be by a fine of not more than
15 \$10,000 or by imprisonment for not more than one year, or
16 by both such fine and imprisonment.

17 (c) Any person who forcibly assaults, resists, opposes,
18 impedes, intimidates, or interferes with any person while
19 engaged in or on account of the performance of inspections
20 or investigatory duties under this Act shall be fined not
21 more than \$5,000 or imprisoned not more than three years,
22 or both. Whoever, in the commission of any such acts, uses
23 a deadly or dangerous weapon, shall be fined not more than
24 \$10,000 or imprisoned not more than ten years, or both.
25 Whoever kills any person while engaged in or on account

1 of the performance of inspecting or investigating duties under
2 this Act shall be punished by imprisonment for any term of
3 years or for life.

4 (d) Any person who gives advance notice of any in-
5 spection to be conducted under this Act, without authority
6 from the Secretary, or his designees, shall be fined not
7 more than \$10,000 or imprisoned not more than five years,
8 or both.

9 GOVERNMENT CONTRACTS

10 SEC. 10. (a) Each contract exceeding \$2,500 and
11 requiring or involving the employment of any person (1)
12 to which the United States or any agency or instrumentality
13 thereof, or the District of Columbia is a party. (2) which
14 is made for or on behalf of the United States, any agency
15 or instrumentality thereof, or the District of Columbia,
16 or (3) which is financed in whole or in part by loans or
17 grants from, or loans insured or guaranteed by, the United
18 States or any agency or instrumentality of the United States,
19 shall include the requirement that no part of such contract
20 (or any subcontract thereunder) will be performed in any
21 place or under any conditions which do not meet the applica-
22 ble occupational safety and health standards. The applicable
23 occupational safety and health standards shall be the stand-
24 ards promulgated by the Secretary under section 3 of this
25 Act, except that, to the extent that the contract will be per-

1 formed in a State in which there is in effect a State plan
2 approved under section 12 (d) which provides for the de-
3 velopment and enforcement of safety and health standards
4 relating to one or more occupational safety or health issues,
5 the applicable occupational safety and health standards relat-
6 ing to such issues shall be those developed and enforced under
7 the State plan rather than those promulgated by the Secre-
8 tary under section 3.

9 (b) In promulgating standards under section 3 of this
10 Act, the Secretary shall to the extent feasible conform such
11 standards to those occupational safety and health standards
12 established under other laws administered by him.

13 (c) In addition to the remedies otherwise provided in
14 this Act, the Secretary may declare ineligible to receive any
15 contract described in subsection (a) of this section any per-
16 son or firm, or any firm, corporation, partnership, or associa-
17 tion in which such person or firm has a controlling interest,
18 which is found to have disregarded its obligations under this
19 section until such person or firm has satisfied the Secretary
20 that it will comply with the requirements of this section.

21 (d) In addition to the remedies otherwise provided in
22 this Act, the Secretary may recommend to the appropriate
23 contracting agency that such agency cancel, terminate, sus-
24 pend, or cause to be canceled, or suspended, any contract

1 made by any contracting agency for the failure of the con-
2 tractor to comply with an order of the Secretary issued under
3 section 6 (a) (1) of this Act for the breach or violation by
4 such employer of the requirements under subsection (a) of
5 this section.

6 VARIATIONS, TOLERANCES, AND EXEMPTIONS

7 SEC. 11. The Secretary may provide such reasonable
8 limitations and may make such rules and regulations allow-
9 ing reasonable variations, tolerances, and exemptions to and
10 from any or all provisions of this Act as he may find neces-
11 sary and proper in the public interest or to avoid serious
12 impairment of the conduct of Government business. The
13 Secretary shall keep an appropriately indexed record of all
14 variations, tolerances, and exemptions granted under this
15 section, which shall be open for public inspection.

16 EFFECTIVE DATE: FEDERAL-STATE RELATIONSHIP

17 SEC. 12. (a) (1) Except as otherwise provided in this
18 section, this Act shall be effective on the first day of the
19 first month after the date of its enactment.

20 (2) Sections 6, 7, 9, and standards promulgated under
21 section 3 shall not take effect until July 1, 1970. Section 10
22 shall not apply to contracts entered into before July 1, 1970.

23 (b) Nothing in this Act shall be deemed to prevent any
24 State agency or court from asserting jurisdiction over any

1 occupational safety or health issue with respect to which
2 no standard is in effect under section 3.

3 (c) Any State which, at any time, desires to assume
4 responsibility for development and enforcement in such State
5 of occupational safety or health standards relating to any
6 occupational safety or health issue with respect to which
7 a Federal standard has been promulgated under section 3
8 shall submit a State plan for the development of such stand-
9 ards and their enforcement.

10 (d) The Secretary shall approve the plan submitted
11 by a State under subsection (c), or any modification thereof,
12 if such plan in his judgment—

13 (1) designates a State agency or agencies as the
14 agency or agencies responsible for administering the plan
15 throughout the State,

16 (2) provides for the development and enforcement
17 of safety and health standards relating to one or more
18 safety or health issues, which standards (and the en-
19 forcement of which standards) are or will be substan-
20 tially as effective in providing safe and healthful
21 employment and places of employment as the standards
22 promulgated under section 3 which relate to the same
23 issues,

1 (3) provides for the effective right of entry and
2 inspection of all workplaces subject to the Act.

3 (4) contains satisfactory assurances that such
4 agency or agencies have or will have the legal author-
5 ity and qualified personnel necessary for the enforce-
6 ment of such standards,

7 (5) gives satisfactory assurances that such State will
8 devote adequate funds to the administration and enforce-
9 ment of such standards, and

10 (6) provides that the State agency will make such
11 reports to the Secretary in such form and containing
12 such information, as the Secretary shall from time to
13 time require.

14 (e) If the Secretary rejects a plan submitted under
15 subsection (d), he shall afford the State submitting the plan.
16 due notice and opportunity for a hearing.

17 (f) After the Secretary approves a State plan submitted
18 under subsection (b), he may, but shall not be required to,
19 exercise his authority under sections 5, 6, 7, and 9, with
20 respect to comparable standards promulgated under section 3,
21 for the period specified in the next sentence. The Secretary
22 may exercise the authority referred to above until he deter-
23 mines, on the basis of actual operations under the State plan,
24 that it meets the criteria set forth in subsection (d), but he
25 shall not make such determination for at least one year after

1 the plan's approval under subsection (d). Upon making
2 the determination referred to in the preceding sentence, the
3 provisions of sections 5, 6, 7, and 9, and standards promul-
4 gated under section 3 of this Act, shall not apply with
5 respect to any occupational safety or health issues covered
6 under the plan.

7 (g) The Secretary shall, on the basis of reports sub-
8 mitted by the State agency and his own inspections make a
9 continuing evaluation of the manner in which each State
10 having a plan approved under this section is carrying out
11 such plan. Whenever the Secretary finds, after affording due
12 notice and opportunity for a hearing, that in the administra-
13 tion of the State plan there is a failure to comply substantially
14 with any provision of the State plan (or any assurance
15 contained therein), he shall notify the State agency of his
16 withdrawal of approval of such plan and upon receipt of such
17 notice such plan shall cease to be in effect.

18 RELATIONSHIP TO OTHER FEDERAL PROGRAMS

19 SEC. 13. When the Secretary promulgates a set of occu-
20 pational safety and health standards applicable to an industry
21 and he determines (and so certifies) that such standards will
22 be substantially as effective in providing safe and healthful
23 employment and places of employment as other safety and
24 health standards applicable to such industry which were
25 promulgated under authority of other Federal laws, then such

1 other standards shall be deemed repealed and rescinded on
2 the effective date of the standards promulgated under this
3 Act, except that proceedings already begun may be carried
4 on to completion.

5 **FEDERAL AGENCY SAFETY PROGRAMS AND**
6 **RESPONSIBILITIES**

7 **SEC. 14. (a)** It shall be the responsibility of the head
8 of each Federal agency to establish and maintain an effective
9 and comprehensive occupational safety and health program
10 which is consistent with the standards promulgated by the
11 Secretary under section 3. The head of each agency shall
12 (after consultation with representatives of the employees
13 thereof) —

14 (1) provide safe and healthful places and condi-
15 tions of employment, consistent with the standards set
16 under section 3;

17 (2) acquire, maintain, and require the use of safety
18 equipment, personal protective equipment, and devices
19 reasonably necessary to protect employees;

20 (3) keep adequate records of all occupational acci-
21 dents and illnesses for proper evaluation and necessary
22 corrective action; and

23 (4) make an annual report to the President with
24 respect to occupational accidents and injuries and the
25 agency's program under this section. Such report shall

1 include any report submitted under section 7902 (e) (2)
2 of title 5, United States Code.

3 (b) The President shall transmit annually to the Senate
4 and House of Representatives a report of the activities of
5 each Federal agency under this section.

6 RESEARCH AND RELATED ACTIVITIES

7 SEC. 15. (a) (1) The Secretary of Health, Education,
8 and Welfare, after consultation with the Secretary and with
9 other appropriate Federal departments or agencies, shall
10 conduct (directly or by grants or contracts) research, experi-
11 ments, and demonstrations relating to occupational safety
12 and health.

13 (2) The Secretary of Health, Education, and Welfare
14 shall from time to time consult with the Secretary in order
15 to develop specific plans for such research, demonstrations,
16 and experiments as are necessary to produce criteria enabling
17 the Secretary to meet his responsibility for the formulation
18 of safety and health standards under this Act; and the Sec-
19 retary of Health, Education, and Welfare, on the basis of
20 such research, demonstrations, and experiments and any
21 other information available to him, shall develop such
22 criteria.

23 (b) The Secretary of Health, Education, and Welfare
24 is authorized to make inspections as provided in section 5

1 of this Act in order to carry out his functions and responsi-
2 bilities under this section.

3 (c) The Secretary of Labor is authorized to enter into
4 contracts, agreements, or other arrangements with appropri-
5 ate public agencies or private organizations for the purpose
6 of conducting studies related to his responsibilities for estab-
7 lishing and applying occupational safety and health standards
8 under section 3 of this Act. In carrying out his responsibili-
9 ties under this subsection, the Secretary shall consult with the
10 Secretary of Health, Education, and Welfare in order to
11 avoid any duplication of efforts under this section.

12 (d) The Secretary, after consultation with the Secretary
13 of Health, Education, and Welfare, and with the appropriate
14 official in each State as duly designated by such State, shall
15 establish such accident and health reporting systems for
16 employers and for the States as he deems necessary to
17 carry out his responsibilities under this Act.

18 TRAINING AND EMPLOYEE EDUCATION

19 SEC. 16. (a) The Secretary of Health, Education, and
20 Welfare, after consultation with the Secretary of Labor and
21 with other appropriate Federal departments and agencies,
22 shall conduct, directly or by grants or contracts (1) educa-
23 tion programs to provide an adequate supply of qualified
24 personnel to carry out the purposes of this Act, and (2) in-

1 formational programs on the importance of and proper use of
2 adequate safety equipment.

3 (b) The Secretary is also authorized to conduct (directly
4 or by grants or contracts) short-term training of personnel
5 engaged in work related to his responsibilities under this Act.

6 (c) The Secretary, in consultation with the Secretary
7 of Health, Education, and Welfare, shall provide for the
8 establishment and supervision of programs for the education
9 and training of employers and employees in the recognition,
10 avoidance, and prevention of unsafe or unhealthful working
11 conditions in employments covered by this Act, and to con-
12 sult with and advise employers as to effective means of pre-
13 venting occupational injuries and illnesses.

14 GRANTS TO THE STATES

15 SEC. 17. (a) The Secretary is authorized, during the
16 fiscal year ending June 30, 1969, and the two succeeding
17 fiscal years, to make grants to the States to assist them (1)
18 in identifying their needs and responsibilities in the area of
19 occupational safety and health, (2) in developing State
20 plans under section 12, or (3) in developing plans for—

21 (A) establishing systems for the collection of in-
22 formation concerning the nature and frequency of occu-
23 pational injuries and diseases;

24 (B) increasing the expertise and enforcement capa-

1 bilities of their personnel engaged in occupational safety
2 and health programs; or

3 (C) otherwise improving the administration and
4 enforcement of State occupational safety and health
5 laws, including standards thereunder, consistent with the
6 objectives of this Act.

7 (b) The Secretary is authorized, during the fiscal year
8 ending June 30, 1969, and the two succeeding fiscal years, to
9 make grants to the States for experimental and demonstration
10 projects consistent with the objectives set forth in subsection
11 (a) of this section.

12 (c) The Governor of the State shall designate the ap-
13 propriate State agency, or agencies, for receipt of any grant
14 made by the Secretary under this section.

15 (d) Any State agency, or agencies, designated by the
16 Governor of the State, desiring a grant under this section
17 shall submit an application therefor to the Secretary.

18 (e) The Secretary shall review the application, and
19 shall, after consultation with the Secretary of Health, Edu-
20 cation, and Welfare, approve or reject such application.

21 (f) The Federal share for each State grant under sub-
22 section (a) or (b) of this section may be up to 90 per
23 centum of the State's total cost.

24 (g) The Secretary is authorized to make grants to the
25 States to assist them in administering and enforcing pro-

1 grams for occupational safety and health contained in State
2 plans approved by the Secretary pursuant to section 12 of
3 this Act. The Federal share for each State grant under this
4 subsection may be up to 50 per centum of the State's total
5 cost.

6 (h) Prior to June 30, 1971, the Secretary shall, after
7 consultation with the Secretary of Health, Education, and
8 Welfare, transmit a report to the President and to Congress,
9 describing the experience under the program and making any
10 recommendations as he may deem appropriate.

11 EFFECT ON OTHER LAWS

12 SEC. 18. Nothing in this Act shall be construed or held to
13 supersede or in any manner affect any workmen's com-
14 pensation law or to enlarge or diminish or affect in any other
15 manner the common law or statutory rights, duties, or liabili-
16 ties of employers and employees under any law with re-
17 spect to injuries, occupational or other diseases, or death
18 of employees arising out of, or in the course of employment.

19 AUDITS

20 SEC. 19. (a) Each recipient of a grant under this Act
21 shall keep such records as the Secretary shall prescribe, in-
22 cluding records which fully disclose the amount and disposi-
23 tion by such recipient of the proceeds of such grant, the
24 total cost of the project or undertaking in connection with
25 which such grant is made or used, and the amount of that

1 portion of the cost of the project or undertaking supplied
2 by other sources, and such other records as will facilitate an
3 effective audit.

4 (b) The Secretary and the Comptroller General of the
5 United States, or any of their duly authorized representa-
6 tives, shall have access for the purpose of audit and examina-
7 tion to any books, documents, papers, and records of the
8 recipients of any grant under this Act that are pertinent to
9 any such grant.

10 REPORTS

11 SEC. 20. Within one hundred and twenty days following
12 the convening of the first session of each Congress, the Sec-
13 retary and the Secretary of Health, Education, and Welfare
14 shall jointly prepare and submit to the President for trans-
15 mittal to the Congress a biennial report upon the subject
16 matter of this Act, the progress concerning the achievement
17 of its purposes, the needs and requirements in the field of
18 occupational safety and health, and any other relevant infor-
19 mation, and including any recommendations they may deem
20 appropriate.

21 APPROPRIATIONS

22 SEC. 21. There are authorized to be appropriated to
23 carry out this Act not to exceed \$20,000,000 for the fiscal
24 year ending June 30, 1969, not to exceed \$50,000,000 for

1 the fiscal year ending June 30, 1970, and for each subse-
2 quent fiscal year such sums as the Congress shall deem
3 necessary.

4 DEFINITIONS

5 SEC. 22. For the purposes of this Act:

6 (a) The term "Secretary" means the Secretary of
7 Labor or his duly authorized representative.

8 (b) The term "commerce" means trade, traffic,
9 commerce, transportation, or communication among the
10 several States; or between a State and any place outside
11 thereof; or within the District of Columbia, or a posses-
12 sion of the United States, or between points in the same
13 State but through a point outside thereof.

14 (c) The term "person" means one or more individ-
15 uals, partnerships, associations, corporations, business
16 trusts, legal representatives, or any organized groups of
17 persons.

18 (d) The term "employer" means a person engaged
19 in a business affecting commerce who has employees, but
20 does not include the United States or any State or polit-
21 ical subdivision of a State.

22 (e) The term "State" includes a State of the
23 United States, the District of Columbia, Puerto Rico,
24 the Virgin Islands, Guam, and American Samoa.

SEPARABILITY

1
2 SEC. 23. If any provision of this Act, or the application
3 of such provision to any person or circumstance, shall be
4 held invalid, the remainder of this Act, or the application of
5 such provision to persons or circumstances other than those
6 as to which it is held invalid, shall not be affected thereby.

91ST CONGRESS
1ST SESSION

H. R. 4294

IN THE HOUSE OF REPRESENTATIVES

JANUARY 23, 1969

Mr. PERKINS introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To assure safe and healthful working conditions for working men and women; to assist the States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Occupational Safety and
4 Health Act of 1969."

CONGRESSIONAL FINDINGS AND PURPOSE

6 SEC. 2. (a) The Congress finds that—

7 (1) personal injuries and illnesses arising out of
8 work situations which result in death or disability are

VI—O

1 an increasing source of tragedy and extreme hardship
2 for workers and their families, and that the number of
3 such injuries and illnesses has reached such sizable pro-
4 portions in the Nation as to reduce to a serious degree
5 the effectiveness of the manpower resources in the United
6 States and thereby impose a substantial burden upon,
7 and a hindrance to, interstate commerce in terms of lost
8 production, wage loss, medical expenses, and disability
9 compensation payments; and

10 (2) the public health and welfare of the Nation is
11 endangered since occupational injuries and illnesses in-
12 volve a large part of the population either as victims
13 of such injuries and illnesses or as members of the
14 victims' families.

15 (b) Congress declares it to be the purpose and policy,
16 through the exercise by Congress of its powers to regulate
17 commerce among the several States and with foreign nations
18 and to provide for the general welfare, to assure so far as
19 possible every working man and woman in the Nation safe
20 and healthful working conditions—

21 (1) by establishing mandatory occupational safety
22 and health standards applicable to businesses affecting
23 commerce;

24 (2) by providing for the effective enforcement of
25 such safety and health standards;

(3) by providing for research relating to occupational safety and health;

(4) by providing for training programs to increase and improve personnel engaged in the field of occupational safety and health;

(5) by more clearly delineating the responsibility of the Federal Government in its activities related to occupational safety and health in the private sector;

(6) by providing grants to the States to assist them in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, and to conduct experimental and demonstration projects in connection therewith; and

(7) by providing for appropriate accident and health reporting procedures which will help achieve the objectives of this Act.

STANDARDS

SEC. 3. (a) Any employer engaged in a business affecting commerce shall furnish employment and a place of employment which are safe and healthful and shall comply with the standards prescribed from time to time by the Secretary after appropriate consultation with other Federal agencies by rule or regulation for the adoption of practices, means, meth-

1 ods, operations, conditions, and processes in order to provide
2 safe and healthful employment and places of employment.

3 (b) Section 553 of title 5, United States Code, shall
4 apply to any rulemaking by the Secretary under subsection
5 (a) of this section.

6 **ADMINISTRATION**

7 **SEC. 4.** In carrying out his responsibilities under this
8 Act, the Secretary is authorized to—

9 (a) appoint, without regard to the civil service
10 laws, such advisory committees or boards as he deems
11 appropriate;

12 (b) use, with their consent, the services, facilities,
13 and employees of Federal agencies with or without reim-
14 bursement, and with the consent of any State or political
15 subdivision thereof, accept and use the services, facilities
16 and employees of the agencies of such State or subdivi-
17 sion with or without reimbursement;

18 (c) employ experts and consultants or organizations
19 thereof as authorized by section 3109, title 5, United
20 States Code, compensate individuals so employed at rates
21 not in excess of \$100 per diem, including travel time, and
22 allow them, while away from their homes or regular
23 places of business, travel expenses (including per diem in
24 lieu of subsistence) as authorized by section 5703 of title
25 5, United States Code, for persons in the Government

1 service employed intermittently, while so employed,
2 except that contracts for such employment may be re-
3 newed annually.

4 INSPECTIONS AND INVESTIGATIONS

5 SEC. 5. (a) In order to carry out the purposes of this
6 Act, the Secretary or his designated representative, upon pre-
7 sending appropriate credentials to the owner, operator, or
8 agent in charge, is authorized—

9 (1) to enter upon at reasonable times any factory,
10 plant, establishment, construction site, mine, or other
11 area or work place or environment subject to the pro-
12 visions of this Act; and

13 (2) to inspect and investigate during regular work-
14 ing hours and at other reasonable times, and within rea-
15 sonable limits and in a reasonable manner, such place or
16 environment and all pertinent conditions, structures,
17 machines, apparatus, devices, equipment and materials
18 therein, and to question employees engaged in activities
19 subject to the provisions of this Act.

20 (b) For the purpose of carrying out his duties under
21 this Act, the Secretary may delegate his authority under
22 this section to any agency of the Federal Government with
23 or without reimbursement, and, with its consent and with or
24 without reimbursement and under conditions the Secretary

1 may prescribe, to any appropriate State agency or agencies
2 designated by the Governor of the State.

3 ADMINISTRATIVE ENFORCEMENT

4 SEC. 6. (a) (1) If, upon inspection or investigation,
5 the Secretary determines that any person has violated the
6 provisions of this Act or the regulations and standards estab-
7 lished thereunder, he shall hold such hearings, issue such
8 orders, and make such decisions, based upon findings of fact,
9 as are deemed to be necessary to enforce the provisions of
10 the Act, and for such purposes the Secretary and the district
11 courts shall have the authority and jurisdiction provided in
12 section 5 of the Act of June 30, 1936 (ch. 881, 49 Stat.
13 2036), as amended.

14 (2) If an inspection or investigation discloses that a
15 violation may result in imminent harm to the safety and
16 health of workers, the Secretary or his duly authorized rep-
17 resentative may immediately issue an order providing for
18 the immediate cessation of such violation and any other
19 measures he may deem necessary to correct or remove such
20 violation and, further, prohibit the employment of any per-
21 sons in locations or under conditions where such violations
22 exist, except to correct or remove the violation. Such order
23 shall remain in effect during the pendency of any subsequent
24 proceeding under paragraph (1) of this subsection and in
25 the event of any judicial proceeding relating to such order

1 before the proceeding under paragraph (1) of this subsection
2 the only issue to be judicially determined shall be the exist-
3 ence of imminent harm to the safety and health of the
4 workers.

5 (b) Each employer subject to this Act shall make, keep,
6 and preserve, and make available to the Secretary such
7 records concerning the requirements of section 3 (a) of this
8 Act, and shall make reports therefrom to the Secretary, as
9 he may prescribe by regulation or order as necessary or ap-
10 propriate for the enforcement of this Act.

11 (c) The Secretary, in consultation with the Secretary of
12 Health, Education, and Welfare, shall provide for the estab-
13 lishment and supervision of programs for the education and
14 training of employers and employees in the recognition,
15 avoidance, and prevention of unsafe working conditions in
16 employments covered by this Act, and to consult with and
17 advise employers as to effective means of preventing occupa-
18 tional injuries and illnesses.

19 INJUNCTIONS, JUDICIAL ENFORCEMENT

20 SEC. 7. (a) Wherever the Secretary has reason to be-
21 lieve, either on the basis of an inspection or investigation,
22 that conditions or practices existing in violation of section
23 3 (a) of this Act, or any rule thereunder, are of such a nature
24 that their immediate correction or removal is reasonably re-

1 quired in order to safeguard the safety and health of workers,
2 the Secretary may bring suit in a district court of the United
3 States to enjoin or restrain the existence of such conditions
4 or practices. Such relief shall include whatever is necessary
5 to safeguard the safety and health of persons affected, includ-
6 ing the closing of the establishment or place in question and
7 prohibiting the entry of any person in such establishment or
8 place, except to correct such conditions or practices. Any suit
9 shall be brought in the district where the person who is re-
10 sponsible for the existence of such conditions or practices
11 resides or transacts business.

12 (b) The district courts of the United States shall have
13 jurisdiction to enforce any order of the Secretary under sec-
14 tion 6 of this Act, and any person aggrieved by such order
15 may obtain review thereof by such courts based upon the
16 record before the Secretary.

17 INADMISSIBILITY AS EVIDENCE; CONFIDENTIALITY OF

18 TRADE SECRETS

19 SEC. 8. (a) No record or determination of any adminis-
20 trative proceeding under this Act or any statement or report
21 of any kind obtained or received in connection with the ad-
22 ministration or enforcement of the provisions of this Act
23 shall be made available to any third party or admitted or
24 used as evidence in any civil action growing out of any mat-
25 ter mentioned in such record, determination, statement, or

1 report, other than an action for enforcement or review under
2 this Act.

3 (b) In connection with any proceeding under this Act
4 no witness or any other person shall be required to divulge
5 trade secrets or secret processes.

6 **PENALTIES**

7 SEC. 9. (a) Any person who violates, or fails or refuses
8 to comply with, section 3 (a) of this Act, any rule issued
9 under section 3 (a) of this Act, or any order issued under
10 section 6 of this Act, shall be subject to a civil penalty of
11 not more than \$1,000 for each such violation. Each violation
12 of such provisions or rules or order shall be a separate
13 offense, except that in the case of a violation through con-
14 tinuing failure or neglect to comply with such provisions
15 or rules or an order of the Secretary, each day of con-
16 tinuance of such failure or neglect shall be deemed a sepa-
17 rate offense. The Secretary or his duly authorized representa-
18 tive is authorized to assess the civil penalties under this
19 section. He may, upon application therefor, remit or miti-
20 gate any forfeiture provided for under this section and he
21 shall have the authority to determine the facts upon all such
22 applications.

23 (b) Penalties under this section shall be collected by
24 the Secretary or by his duly authorized representative unless

1 a district court determines that a violation of an order of
2 the Secretary issued under section 6 (a) (2) would not result
3 in imminent harm to the safety and health of the workers.

4 (c) Any person who willfully violates or fails or refuses
5 to comply with the provisions of section 3 (a) of this Act
6 shall be guilty of a misdemeanor, and upon conviction shall
7 be punished by a fine of not more than \$5,000 or by im-
8 prisonment for not more than six months, or by both such
9 fine and imprisonment; except that if the conviction is for
10 a violation committed after a first conviction of such person,
11 punishment shall be by a fine of not more than \$10,000 or
12 by imprisonment for not more than one year, or by both
13 such fine and imprisonment.

14 (d) Any person who forcibly assaults, resists, opposes,
15 impedes, intimidates, or interferes with any person while
16 engaged in or on account of the performance of inspections
17 or investigatory duties under this Act shall be fined not
18 more than \$5,000 or imprisoned not more than three years,
19 or both. Whoever, in the commission of any such acts, uses
20 a deadly or dangerous weapon, shall be fined not more than
21 \$10,000 or imprisoned not more than ten years, or both.
22 Whoever kills any person while engaged in or on account of
23 the performance of inspecting or investigating duties under
24 this Act shall be punished as provided under sections 1111
25 and 1114 of title 18, United States Code.

GOVERNMENT CONTRACTS

SEC. 10. (a) Each contract or subcontract exceeding \$2,500 and requiring or involving the employment of any person (1) to which the United States or any agency or instrumentality thereof, or the District of Columbia is a party, (2) which is made for or on behalf of the United States, any agency or instrumentality thereof, or the District of Columbia, or (3) which is financed in whole or in part by loans or grants from, or loans insured or guaranteed by, the United States or any agency or instrumentality of the United States, shall include the requirement that no part of such contract will be performed in any place or under any conditions which do not meet the standards issued by the Secretary under section 3 (a) of this Act.

(b) In establishing standards under section 3 (a) of this Act, the Secretary shall to the extent feasible conform such standards and those safety and health standards promulgated under other laws administered by him.

(c) In addition to the remedies otherwise provided in this Act, the Secretary of Labor may declare ineligible to receive any contracts subject to this Act any person or firm, or any firm, corporation, partnership, or association in which such person or firm has a controlling interest, which is found to have disregarded its obligations under this Act until such

1 person or firm has satisfied the Secretary that it will comply
2 with the requirements of this Act.

3 (d) In addition to the remedies otherwise provided in
4 this Act, the Secretary may recommend to the appropriate
5 contracting agency that such agency cancel, terminate, sus-
6 pend, or cause to be cancelled, or suspended, any contract
7 made by any contracting agency for the failure of an em-
8 ployer who is a contractor or subcontractor to comply with
9 the order of the Secretary issued under section 6 of this Act
10 for the breach or violation by such employer of the require-
11 ments under subsection (a) of this section.

12 (e) This section shall not apply to any contract to be
13 performed in a workplace within a foreign country or within
14 any territory under the jurisdiction of the United States, ex-
15 cept within a State, as that term is defined in section 20 (f)
16 of this Act.

17 **VARIATIONS, TOLERANCES, AND EXEMPTIONS**

18 **SEC. 11.** The Secretary may provide such reasonable
19 limitations and may make such rules and regulations allow-
20 ing reasonable variations, tolerances, and exemptions to and
21 from any or all provisions of this Act as he may find neces-
22 sary and proper in the public interest or to avoid serious
23 impairment of the conduct of Government business. The
24 Secretary shall keep an appropriately indexed record of all

1 variations, tolerances, and exemptions granted under this
2 section, which shall be open for public inspection.

3 **FEDERAL-STATE RELATIONSHIP**

4 **SEC. 12.** (a) The Secretary may, in his discretion, by
5 rule or order decline to assert jurisdiction over any occupa-
6 tional safety or health issue, or class or category of such issue,
7 governed by any State law whenever in his opinion the
8 provisions of such State law and their enforcement would
9 reasonably carry out the objectives of this Act.

10 (b) Nothing in this Act shall prevent or bar any State
11 agency or court from assuming and asserting jurisdiction over
12 any occupational safety or health issue within five hundred
13 and forty-five days following the effective date of this Act
14 and thereafter over any such issue over which the Secretary
15 declines to assert jurisdiction under subsection (a) of this
16 section.

17 **RELATIONSHIP TO OTHER FEDERAL PROGRAMS**

18 **SEC. 13.** Nothing in this Act shall authorize the Secre-
19 tary to regulate, or shall apply to, working conditions of
20 employees with respect to whom another Federal agency
21 has statutory authority to prescribe or enforce standards or
22 regulations affecting occupational safety or health. The Sec-
23 retary shall coordinate, to the greatest extent practicable, the

1 occupational safety and health activities of all Federal
2 agencies.

3 APPROPRIATIONS

4 SEC. 14. There are authorized to be appropriated such
5 sums as may be necessary to carry out this Act.

6 RESEARCH AND RELATED ACTIVITIES

7 SEC. 15. (a) (1) The Secretary of Health, Education,
8 and Welfare, after consultation with the Secretary and with
9 other appropriate Federal departments or agencies, shall
10 conduct (directly or by grants or contracts) research, ex-
11 periments, and demonstrations relating to occupational
12 safety and health.

13 (2) The Secretary of Health, Education, and Welfare
14 shall from time to time consult with the Secretary in order
15 to develop specific plans for such research, demonstrations,
16 and experiments as are necessary to produce criteria en-
17 abling the Secretary to meet his responsibility for the for-
18 mulation of safety and health standards under this Act; and
19 the Secretary of Health, Education, and Welfare, on the
20 basis of such research, demonstrations, and experiments and
21 any other information available to him, shall develop such
22 criteria.

23 (b) The Secretary of Health, Education, and Welfare
24 is authorized to make inspections as provided in section 5 of

1 this Act in order to carry out his functions and responsibili-
2 ties under this section.

3 (c) The Secretary of Labor is authorized to enter into
4 contracts, agreements, or other arrangements with appro-
5 priate public agencies or private organizations for the pur-
6 pose of conducting studies related to his responsibilities for
7 establishing and applying occupational safety and health
8 standards under section 3 of this Act. In carrying out his
9 responsibilities under this subsection, the Secretary shall con-
10 sult with the Secretary of Health, Education, and Welfare
11 in order to avoid any duplication of efforts under this section.

12 (d) The Secretary, after consultation with the Secre-
13 tary of Health, Education, and Welfare, shall establish such
14 accident and health reporting systems for employers and for
15 the States as he deems necessary to carry out his responsi-
16 bilities under this Act.

17 SEC. 16. (a) The Secretary of Health, Education, and
18 Welfare, after consultation with the Secretary of Labor and
19 with other appropriate Federal departments and agencies,
20 shall conduct (directly or by grants or contracts) educa-
21 tional programs to provide an adequate supply of personnel
22 to carry out the purposes of this Act.

23 (b) The Secretary is also authorized to conduct (di-
24 rectly or by grants or contracts) short-term training of per-

1 sonnel engaged in work related to his responsibilities under
2 this Act.

3 GRANTS TO THE STATES

4 SEC. 17. (a) The Secretary is authorized during the
5 period beginning July 1, 1969, and ending June 30, 1972,
6 to make grants to the States to assist them in identifying their
7 needs and responsibilities in the area of occupational safety
8 and health and to develop plans for—

9 (1) establishing systems for the collection of in-
10 formation concerning the nature and frequency of occu-
11 pational injuries and diseases;

12 (2) increasing the expertise and enforcement ca-
13 pabilities of their personnel engaged in occupational
14 safety and health programs; and

15 (3) otherwise improving the administration and
16 enforcement of State occupational safety and health
17 laws, including standards thereunder, consistent with the
18 objectives of this Act.

19 (b) The Secretary is authorized during the period be-
20 ginning July 1, 1969, and ending June 30, 1972, to make
21 grants to the States for experimental and demonstration
22 projects consistent with the objectives set forth in para-
23 graphs (1) through (3) of subsection (a) of this section.

1 (c) The Governor of the State shall designate the ap-
2 propriate State agency, or agencies, for receipt of any grant
3 made by the Secretary under this section.

4 (d) Any State agency, or agencies, designated by the
5 Governor of the State, desiring a grant under this section
6 shall submit an application therefor to the Secretary.

7 (e) The Secretary shall review the application, and
8 shall, after consultation with the Secretary of Health, Edu-
9 cation, and Welfare, approve or reject such application.

10 (f) As a condition for any grant under this section the
11 State must agree to comply with the reporting and account-
12 ing requirements which the Secretary shall from time to
13 time prescribe by rule or regulation to assure that moneys
14 expended thereunder are in furtherance of the purposes of
15 this section.

16 (g) The Federal share for each State grant under this
17 section may be up to 90 per centum of the State's total
18 cost.

19 (h) Prior to June 30, 1972, the Secretary shall, after
20 consultation with the Secretary of Health, Education, and
21 Welfare, transmit a report to the President and to Congress,
22 describing the experience under the program and making
23 any recommendations as he may deem appropriate.

1 EFFECT ON OTHER LAWS

2 SEC. 18. Nothing in this Act shall be construed as
3 repealing or modifying in any way any other Federal laws
4 prescribing safety and health requirements.

5 AUDITS

6 SEC. 19. The Comptroller General of the United States,
7 or any of his duly authorized representatives, shall have
8 access for the purpose of audit and examinations to any
9 books, documents, papers, and records of the grantees that
10 are pertinent to the grants received under this Act.

11 REPORTS

12 SEC. 20. Within one hundred and twenty days following
13 the convening of the first session of each Congress, the Sec-
14 retary and the Secretary of Health, Education, and Welfare
15 shall jointly prepare and submit to the President for trans-
16 mittal to the Congress a biennial report upon the subject
17 matter of this Act, the progress concerning the achievement
18 of its purposes, the needs and requirements in the field of
19 occupational safety and health, and any other relevant in-
20 formation, and including any recommendations they may
21 deem appropriate.

DEFINITIONS

1

2 SEC. 21. (a) The term "Secretary" appearing in this
3 Act means the Secretary of Labor or his duly authorized
4 representatives.

5 (b) The term "commerce" means trade, traffic, com-
6 merce, transportation, or communication among the several
7 States; or between a State and any place outside thereof; or
8 within the District of Columbia, or a possession of the
9 United States, or between points in the same State but
10 through a point outside thereof.

11 (c) The term "person" means one or more individ-
12 uals, partnerships, associations, corporations, business trusts,
13 legal representatives, or any organized groups of persons.

14 (d) The term "employer" means a person engaged in
15 a business affecting commerce who has employees and in-
16 cludes any person acting directly or indirectly in the interest
17 of an employer in relation to an employee, but does not in-
18 clude the United States or any State or political subdivision
19 of a State or any labor organization (other than when acting
20 as an employer), or anyone acting in the capacity of officer
21 or agent of such labor organization.

1 (e) The term "employee" means an individual em-
2 ployed by an employer.

3 (f) The term "State" includes a State of the United
4 States, the District of Columbia, Puerto Rico, and posses-
5 sions of the United States.

6 SEPARABILITY

7 SEC. 22. If any provision of this Act, or the application
8 of such provision to any person or circumstance, shall be
9 held invalid, the remainder of this Act, or the application of
10 such provision to persons or circumstances other than those
11 as to which it is held invalid, shall not be affected thereby.

91ST CONGRESS
1ST SESSION

H. R. 13373

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1969

Mr. AYRES (for himself, Mr. GERALD R. FORD, Mr. ESCH, and Mr. STEIGER of Wisconsin) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To provide a comprehensive program for assuring safe and healthful working conditions for working men and women by creating a National Occupational Safety and Health Board to be appointed by the President for the purpose of setting mandatory safety and health standards; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Occupational Safety and
- 4 Health Act of 1969."

I—O

1 CONGRESSIONAL FINDINGS AND PURPOSE

2 SEC. 2. (a) The Congress finds that personal injuries
3 and illnesses arising out of work situations which result in
4 death or disability impose a substantial burden upon, and
5 are a hindrance to, interstate commerce in terms of lost pro-
6 duction, wage loss, medical expenses, and disability compen-
7 sation payments.

8 (b) The Congress declares it to be the purpose and
9 policy, through the exercise by Congress of its powers to
10 regulate commerce among the several States and with for-
11 eign nations to provide for the general welfare, to assure so
12 far as possible every working man and woman in the Nation
13 safe and healthful working conditions and to recognize the
14 humanitarian considerations in preserving our human re-
15 sources—

16 (1) by encouraging employers in their efforts to
17 reduce the number of occupational injuries and health
18 hazards in their establishments, and to stimulate em-
19 ployers to institute new and to perfect existing programs
20 for providing safe and healthful working conditions;

21 (2) by building upon advances already made
22 through employer initiative for providing safe and
23 healthful working conditions;

24 (3) by creating a National Occupational Safety
25 and Health Board to be appointed by the President for

1 the purpose of setting mandatory occupational safety
2 and health standards applicable to businesses affecting
3 commerce;

4 (4) by providing for research in the field of occupa-
5 tional safety and health, including the psychological
6 factors involved, and by developing innovative methods,
7 techniques and approaches for dealing with occupational
8 safety and health problems;

9 (5) by exploring ways to discover latent diseases,
10 establishing causal connections between diseases and
11 work in environmental conditions, and conducting other
12 research relating to health problems, in recognition of
13 the fact that occupational health standards present prob-
14 lems often different from those involved in occupational
15 safety;

16 (6) by providing for training programs to increase
17 the number and competence of personnel engaged in the
18 field of occupational safety and health;

19 (7) by providing for the effective enforcement of
20 such safety and health standards;

21 (8) by encouraging the States to assume the fullest
22 responsibility for the administration and enforcement of
23 their occupational safety and health laws by providing
24 grants to the States to assist in identifying their needs
25 and responsibilities in the area of occupational safety and

1 health, to develop plans in accordance with the provisions
2 of this Act, to improve the administration and enforce-
3 ment of State occupational safety and health laws, and to
4 conduct experimental and demonstration projects in con-
5 nection therewith;

6 (9) by providing for appropriate accident and
7 health reporting procedures which will help achieve the
8 objectives of this Act; and

9 (10) by encouraging joint labor-management efforts
10 and improved employee work practices to reduce the
11 number of such injuries and diseases.

12 DEFINITIONS AND JURISDICTION

13 SEC. 3. (a) For the purposes of this Act:

14 (1) The term "Secretary" means the Secretary of Labor
15 or his duly authorized representative.

16 (2) The term "Board" means the National Occupa-
17 tional Safety and Health Board established under section 5
18 of this Act.

19 (3) The term "commerce" means trade, traffic, com-
20 merce, transportation, or communication among the several
21 States; or between a State and any place outside thereof; or
22 within the District of Columbia, or a possession of the United
23 States, other than a State as defined in subsection (a) (6) of
24 this section, or between points in the same State but through
25 a point outside thereof.

5

1 (4) The term "person" means one or more individuals,
2 partnerships, associations, corporations, business trusts, legal
3 representatives, or any organized group of persons.

4 (5) The term "employer" means a person engaged in
5 a business affecting commerce who has employees, but does
6 not include: the United States or any State or political sub-
7 division of a State; any nonagricultural employer who em-
8 ployed no more than three employees at any time during
9 the preceding calendar year; and any agricultural employer
10 who did not, during any calendar quarter during the preced-
11 ing calendar year, use more than five hundred man-days of
12 hired farm labor.

13 (6) The term "State" includes a State of the United
14 States, the District of Columbia, Puerto Rico, the Virgin
15 Islands, and Guam.

16 (7) The term "industry " means a trade, business, in-
17 dustry, or branch thereof, or group of industries, in which
18 individuals are gainfully employed.

19 (8) The term "occupational safety and health stand-
20 ard" means a standard which requires conditions, or the
21 adoption or use of one or more practices, means, methods,
22 operations or processes, reasonably necessary to provide safe
23 or healthful employment and places of employment.

24 (9) The term "national consensus standard" means
25 any occupational safety and health standard or modification

1 thereof which (a) has been adopted by a nationally recog-
2 nized public or private standards-producing organization
3 possessing technical competence and under a consensus
4 method which involves consideration of the views of inter-
5 ested and affected parties, and (b) has been designated by
6 the Board, after consultation with other appropriate Federal
7 agencies.

8 (10) The term "establishment" means any distinct,
9 physical place of business.

10 (b) (1) The Board in its discretion may by rule of de-
11 cision or by published rule, decline to assert jurisdiction over
12 any class or category of employers where in the opinion of
13 the Board the effect on commerce of such employer's opera-
14 tion is not sufficiently substantial to warrant the application
15 of this Act.

16 (2) This Act shall not apply with respect to employ-
17 ment performed in a workplace within a foreign country or
18 within territory under the jurisdiction of the United States
19 other than the following: a State; Wake Island; and the
20 Canal Zone.

21 STANDARDS

22 SEC. 4. (a) Except as provided in sections 3(b), 12
23 and 14 of this Act, each employer engaged in a business
24 affecting commerce shall furnish employment and a place of
25 employment which are safe and healthful as prescribed by

1 occupational safety and health standards promulgated by the
2 National Occupational Safety and Health Board, established
3 by section 5 of this Act. Such standards shall be promulgated,
4 modified, or revoked by the Board by rule in accordance
5 with subsections (b) or (c).

6 (b) Whenever the Board determines that safety and
7 health standards should be prescribed for any trade, craft,
8 occupation, or type of business, industry, workplace, or other
9 work environment for which no standards have previously
10 been prescribed pursuant to this Act, and for which an appli-
11 cable national consensus standard exists, it shall promulgate
12 by rule such applicable national consensus standard, such
13 rule (or subsequent modification thereof) to become effective
14 thirty days after publication in the Federal Register unless
15 within such thirty-day period the Secretary of Labor (with
16 respect to safety issues) or the Secretary of Health, Educa-
17 tion, and Welfare (with respect to health issues) files a
18 written objection together with reasons in support of such
19 objection with the Board in which event such standard shall
20 be promulgated in accordance with subsection (c) of this
21 section. If the Board in its judgment decides that it is neces-
22 sary to modify a national consensus standard it shall give
23 notice to the nationally recognized standards-producing or-
24 ganization which produced such standard and afford the
25 organization a period of sixty days (beginning with the day

1 of receipt of such notice by the organization), or such addi-
2 tional period as the Board may, in its discretion, allow within
3 which to modify such standard in accordance with the con-
4 sensus method of the organization: *Provided*, That if the
5 standards-producing organization fails to modify the national
6 consensus standard within the sixty-day period, the Board
7 may commence proceedings under subsection (c) of this
8 section. If the organization so modifies such standard, the
9 Board shall promulgate by rule such modified national con-
10 sensus standard, such rule to become effective thirty days
11 after publication in the Federal Register, unless within such
12 thirty-day period the Secretary of Labor (with respect to
13 safety issues) or the Secretary of Health, Education, and
14 Welfare (with respect to health issues) files a written objec-
15 tion together with reasons in support of such objection with
16 the Board in which event such standard shall be promulgated
17 in accordance with subsection (c) of this section. Any such
18 standard promulgated pursuant to this subsection shall be
19 known as an "adopted national consensus standard." Sec-
20 tion 553 of title 5, United States Code, shall not apply to
21 this subsection.

22 (c) A rule or regulation to establish or modify an occu-
23 pational safety or health standard other than those which are
24 required to be promulgated or modified in accordance with
25 subsection (b) shall be promulgated, issued, modified, or re-

1 pealed by the Board as enumerated in paragraphs (1), (2),
2 and (3) of this subsection: *Provided*, That prior to the insti-
3 tution of any procedures under this subsection, the Board shall
4 submit to the appropriate national standards-producing or-
5 ganization any proposed standard and afford such organiza-
6 tion reasonable opportunity, not to exceed ninety days un-
7 less extended by the Board, to prepare a report on the tech-
8 nical feasibility, reasonableness and practicality of such stand-
9 ard:

10 (1) Whenever the Board makes a preliminary determi-
11 nation that such a rule should be prescribed, the Board shall
12 schedule and give notice of a hearing. Notice of the time and
13 place of any such hearing shall be published in the Federal
14 Register thirty days prior to the hearing and shall contain
15 either the terms or substance of the proposed rule or a de-
16 scription of the subjects and issues involved. Prior to the
17 hearing interested persons shall be afforded an opportunity
18 to submit written data, views, or arguments. Only persons
19 who have submitted such written data, views, or arguments
20 shall have a right at such hearing to submit oral or written
21 evidence, data, views or arguments.

22 (2) Upon the entire record before it, including any
23 written data, views, and arguments submitted in connection
24 with the hearing, and giving due regard to national consensus

1 standards, if any, the Board may issue a rule promulgating,
2 modifying, or revoking an occupational safety and health
3 standard. The rule shall become effective on the expiration of
4 sixty days after the date of its publication in the Federal
5 Register unless the Secretary of Labor (with respect to
6 safety issues) or the Secretary of Health, Education, and
7 Welfare (with respect to health issues) files a written objec-
8 tion to the rule or any part thereof before the expiration of
9 such period. Such objection shall be accompanied by sug-
10 gested alternative standards and shall state that, based on the
11 record before the Board the rule does not, in the judgment of
12 the Secretary or the Secretary of Health, Education, and
13 Welfare, as the case may be, provide safe and healthful
14 working conditions or is not feasible.

15 (3) If within sixty days of the publication in the Fed-
16 eral Register of the rule the Secretary of Labor (with respect
17 to safety issues) or the Secretary of Health, Education, and
18 Welfare (with respect to health issues) files a written objec-
19 tion, and suggests alternative standards, the rule shall not
20 become effective unless the Board within thirty days after the
21 filing of objections reaffirms or modifies its decision to issue
22 its rule by a majority vote of its five members, and states the
23 reasons for such action. The rule, as finally determined and
24 adopted by the Board shall be published in the Federal
25 Register, to take effect not less than thirty days after publica-

1 tion. Whenever the rule as finally determined and adopted
2 varies from the rule originally proposed by the Board, the
3 Board shall also publish the basis for the new rule.

4 (d) The Secretary of Labor (with respect to safety
5 issues) or the Secretary of Health, Education, and Welfare
6 (with respect to health issues) may submit a request to the
7 Board at any time to establish or modify occupational safety
8 and health standards indicated in the request. Within ninety
9 days from the receipt of the request, the Board shall com-
10 mence proceedings under subsections (b) or (c) of this
11 section to set such standards.

12 (e) If, after the termination of a hearing conducted
13 under subsection (c) of this section and prior to the pub-
14 lication of the rule, an interested person who participated in
15 the hearing before the Board makes application to the Board
16 for leave to adduce additional evidence and such person shows
17 to the satisfaction of the Board that such additional evidence
18 may materially affect the result of the hearing and that there
19 were reasonable grounds for failure to adduce such evidence
20 in the hearing before the Board, the Board may reopen the
21 hearing for the purpose of considering such additional evi-
22 dence.

23 (f) In determining the priority for establishing stand-
24 ards under this section, the Board shall give due regard to

1 the need for mandatory safety and health standards of par-
2 ticular industries, trades, crafts, occupations, businesses,
3 workplaces or work environments. The Board shall also give
4 due regard to the recommendations of the Secretary and the
5 Secretary of Health, Education, and Welfare regarding the
6 need for mandatory standards in determining the priority
7 for establishing such standards.

8 NATIONAL OCCUPATIONAL SAFETY AND HEALTH BOARD

9 SEC. 5. (a) The National Occupational Safety and
10 Health Board is hereby established. The Board shall be
11 composed of five members, at least three of whom shall have
12 a background either by reason of previous training, educa-
13 tion or experience in the field of occupational safety or health,
14 who shall be appointed by the President by and with the
15 consent of the Senate. One of the five members may be
16 designated at any time by the President to serve as Chair-
17 man of the Board.

18 (b) The terms of office of the members of the Board
19 shall be as follows: one member shall be appointed for a
20 term of one year, one member shall be appointed for a term
21 of two years, another for a term of three years, and the
22 two remaining members shall be appointed for periods of
23 four and five years, respectively. Their successors shall be
24 appointed for terms of five years each, except that vacancy
25 caused by death, resignation, or removal of a member prior

1 to the expiration of the term for which he was appointed
2 shall be filled only for the remainder of such unexpired term.
3 A member of the Board may be removed by the President
4 for inefficiency, neglect of duty, or malfeasance in office.

5 (c) Subchapter II (relating to executive schedule pay
6 rates) of chapter 53 of title V of the United States Code is
7 amended as follows:

8 (1) Section 5314 (5 U.S.C. 5314) is amended by
9 adding at the end thereof the following: "(54) Chairman,
10 National Occupational Safety and Health Board."

11 (2) Section 5315 (5 U.S.C. 5315) is amended by
12 adding at the end thereof the following: "(92) Members,
13 National Occupational Safety and Health Board."

14 (d) The principal office of the Board shall be in the
15 District of Columbia. The Board shall have an official seal
16 which shall be judicially noticed and which shall be preserved
17 in the custody of the Secretary of the Board.

18 (e) The Board shall, without regard to the civil service
19 laws, appoint and prescribe the duties of a Secretary of the
20 Board. Subject to the civil service laws, the Board shall
21 appoint such other employees, including hearing examiners,
22 as it deems necessary in exercising its responsibilities. The
23 compensation of all employees appointed by the Board shall
24 be fixed in accordance with chapter 51 and subchapter III
25 of chapter 53 of title 5, United States Code.

1 (f) For the purpose of carrying out its functions under
2 the Act, three members of the Board shall constitute a
3 quorum, and official action can be taken only on the affirma-
4 tive vote of at least three members; but upon the order of the
5 Board a special panel composed of one or more members, or
6 a hearing examiner, shall conduct any hearing provided for
7 in section 4 and submit the transcript of such hearing to the
8 entire Board for its action thereon.

9 (g) The Board is authorized to employ experts and con-
10 sultants or organizations thereof as authorized by section
11 3109 of title 5, United States Code, and allow them while
12 away from their homes or regular places of business, travel
13 expenses (including per diem in lieu of subsistence) as
14 authorized by section 5703 (b) of title 5, United States Code,
15 for persons in the Government service employed intermit-
16 tently, while so employed.

17 (h) To carry out its functions under section 4 and sec-
18 tion 7 (a) the Board is authorized to issue subpoenas for the
19 attendance and testimony of witnesses and the production of
20 relevant papers, books, and documents and administer oaths.
21 Witnesses summoned before the Board shall be paid the same
22 fees and mileage that are paid witnesses in the courts of the
23 United States.

24 (i) The Board may order testimony to be taken by

1 deposition in any proceeding pending before it at any stage
2 of such proceeding. Reasonable notice must first be given in
3 writing by the Board or by the party or his attorney of
4 record, which notice shall state the name of the witness and
5 the time and place of the taking of his deposition. Any per-
6 son may be compelled to appear and depose, and to produce
7 books, papers, or documents, in the same manner as wit-
8 nesses may be compelled to appear and testify and produce
9 like documentary evidence before the Board, as provided in
10 subsection (j) of this section. Witnesses whose depositions
11 are taken under this subsection, and the persons taking such
12 depositions, shall be entitled to the same fees as are paid
13 for like services in the courts of the United States.

14 (j) In the case of contumacy by, or refusal to obey a
15 subpoena served upon any person under this subsection, the
16 Federal district court for any district in which such person
17 is found or resides or transacts business, upon application by
18 the United States, and after notice to such person and hear-
19 ing, shall have jurisdiction to issue an order requiring such
20 person to appear and produce documents before the Board,
21 or both; and any failure to obey such order of the court may
22 be punished by such court as a contempt thereof.

23 (k) The Board is authorized to make such rules as are
24 necessary for the orderly transaction of its proceedings.

DUTIES OF THE SECRETARY

INSPECTIONS AND INVESTIGATIONS

SEC. 6. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter upon at reasonable times any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer or on a contract described in section 11 (a) ; and

(2) to question any such employee and to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any such area, workplace, or environment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein.

(b) For the purpose of carrying out his duties under this Act the Secretary may delegate his authority under this section to any agency of the Federal Government with or without reimbursement and with its consent and to any State agency or agencies designated by the Governor of the State and with or without reimbursement and under conditions agreed upon by the Secretary and such State agency or agencies.

ADMINISTRATIVE ENFORCEMENT

SEC. 7. (a) (1) If, upon inspection or investigation, the Secretary within his discretion determines that there is reasonable cause to believe that an employer has violated the standards promulgated under section 4 or that any person has violated any regulation prescribed under subsection (b) of this section or any contractual requirement of section 11 (a), he may petition the Board for a hearing to determine if a violation has occurred. The Board shall hold a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a) (3) of such section), and shall issue such orders, and make such decisions, based upon findings of fact, as are deemed to be necessary to enforce such standards, regulations, or requirements: *Provided*, That no employer shall be found to have violated the standards under this Act if he demonstrates by a preponderance of the evidence that he has provided safe and healthful working conditions which are substantially equal to those required to be maintained pursuant to the applicable standards under this Act. The Board shall give any person who is alleged to have violated the standards promulgated under section 4, the information required by section 554 (b) of title 5, at least fifteen days prior to hearing.

(2) In making his inspections and investigations under

1 this Act the Secretary may require the attendance and testi-
2 mony of witnesses and the production of evidence under oath.
3 Witnesses shall be paid the same fees and mileage that are
4 paid witnesses in the courts of the United States. In case of
5 contumacy, failure, or refusal of any person to obey such an
6 order, any district court of the United States or the United
7 States courts of any territory or possession, within the juris-
8 diction of which such person is found, or resides or transacts
9 business, upon the application by the Secretary, shall have
10 jurisdiction to issue to such person an order requiring such
11 person an order requiring such person to appear to produce
12 evidence if, as, and when so ordered, and to give testimony
13 relating to the matter under investigation or in question; and
14 any failure to obey such order of the court may be punished
15 by said court as a contempt thereof.

16 (b) Each employer shall make, keep, and preserve for
17 such period of time, and make available to the Secretary such
18 records concerning the implementation of section 4 of this
19 Act as the Secretary shall prescribe by regulation as may be
20 necessary to carry out his functions under this Act. On the
21 basis of such records, employers shall file such reports with
22 the Secretary as he shall prescribe by regulation, as necessary
23 to carry out his functions under this Act. In prescribing regu-
24 lations under this section, the Secretary shall consult with the
25 States in order to minimize or eliminate separate record keep-

1 ing or reporting requirements and to avoid duplication of
2 effort.

3 JUDICIAL PROCEEDINGS

4 SEC. 8. (a) The Secretary shall have power, upon issu-
5 ance of an order under section 7 (a) (1), to petition any
6 United States district court within any district wherein a vio-
7 lation of the Act is alleged to have occurred or wherein the
8 employer has its principal office, for appropriate relief. The
9 district courts of the United States shall have jurisdiction to
10 enforce (by restraining order, injunction, or otherwise) any
11 order of the Board under section 7 (a) (1) of this Act. The
12 Secretary or any other person adversely affected or aggrieved
13 by an order of the Board issued under section 7 (a) (1) of
14 this Act may obtain review of such order by the United States
15 district court for the district wherein the violation is alleged to
16 have occurred or wherein the employer has its principal office
17 by filing in such court within thirty days following the issu-
18 ance of such order a petition praying that the action of the
19 Board be modified or set aside in whole or in part. A petition
20 for review by the court shall not stay an order of the Board
21 under section 7 (a) (1) unless otherwise provided by the
22 court.

23 (b) If, upon inspection or investigation, the Secretary
24 within his discretion determines (A) that there is reasonable
25 cause to believe an employer has violated any standard

1 promulgated under section 4 or that any person has violated
2 a contractual requirement of section 11 (a) and (B) that
3 conditions or practices in such places of employment are
4 such that a danger exists which could reasonably be expected
5 to cause death or serious physical harm immediately or
6 before the imminence of such danger can be eliminated, the
7 Secretary may petition any United States district court,
8 within any district wherein such violation is alleged to have
9 occurred, or wherein the employer has its principal office for
10 injunctive relief or a temporary restraining order. Upon the
11 filing of any such petition the district court shall have juris-
12 diction to grant such injunctive relief or temporary restrain-
13 ing order as it deems just and proper, notwithstanding any
14 other provision of law: *Provided*, That no temporary re-
15 straining order shall be issued without notice unless a petition
16 alleges that substantial and irreparable injury will be un-
17 avoidable and such temporary restraining order shall be
18 effective for no longer than five days and will become void
19 at the expiration of such period: *Provided further*, That the
20 Secretary may obtain appropriate injunctive relief following
21 the expiration of a five-day restraining order pending the
22 outcome of a proceeding under section 7 (a) (1) of this Act
23 begun during the five-day period of the temporary restrain-
24 ing order. Upon filing of any petition for preliminary in-
25 junction the courts shall cause notice thereof to be served

1 upon the employer, who shall be given an opportunity to
2 appear by counsel and present any relevant testimony.

3 (c) Except as provided in section 518 (a) of title 28,
4 United States Code, relating to litigation before the Supreme
5 Court and the Court of Claims, the Solicitor of Labor may
6 appear for and represent the Secretary and the Board in
7 any civil litigation brought under this Act but all such liti-
8 gation shall be subject to the direction and control of the
9 Attorney General: *Provided*, That in any appeal of any
10 action of the Board brought by the Secretary under section
11 8 (a), the Solicitor shall represent the Secretary; the Attor-
12 ney General shall represent the Board in such proceedings.

13 (d) In any case where an injunction or temporary re-
14 straining order is obtained pursuant to subsection (b) of
15 this section by the Secretary, the court which grants such
16 relief shall set a sum which it deems proper for the payment
17 of such costs, damages, and attorney's fees as may be in-
18 curred or suffered by any party who is found to have been
19 wrongfully restrained or enjoined. In no case shall any party
20 wrongfully restrained or enjoined be entitled to a recovery
21 for costs, damages, and attorney's fees in excess of the sum
22 set by the court.

23 (e) Any interested person affected by the action of the
24 Board in issuing a standard under section 4 may obtain re-

1 view of such action by the United States Court of Appeals
2 for the District of Columbia by filing in such court within
3 thirty days following the publication of such rule a petition
4 praying that the action of the Board be modified or set aside
5 in whole or in part. A copy of such petition shall forthwith
6 be served upon the Board, and thereupon the Board shall
7 certify and file in the court the record upon which the action
8 complained of was issued as provided in section 2112 of
9 title 28, United States Code. Findings of fact by the Board,
10 if supported by substantial evidence on the record as a whole,
11 shall be conclusive; but the court, for good cause shown, may
12 remand the case to the Board to take further evidence, and
13 the Board may thereupon make new or modified findings of
14 fact and may modify its previous action and shall certify to
15 the court the record of the further proceedings. Such new or
16 modified findings of fact shall likewise be conclusive if sup-
17 ported by substantial evidence on the record considered as a
18 whole. The remedy provided by this subsection for reviewing
19 a standard shall be exclusive. The judgment of the court shall
20 be subject to review by the Supreme Court of the United
21 States upon certiorari or certification as provided in section
22 1254 of title 28, United States Code. The commencement of
23 a proceeding under this subsection shall not, unless specifi-

1 cally ordered by the court, delay the application of the
2 Board's standards.

3 INADMISSIBILITY AS EVIDENCE; CONFIDENTIALITY OF
4 TRADE SECRETS

5 SEC. 9. (a) No record or determination of any admin-
6 istrative proceeding under this Act or any statement or
7 report of any kind obtained or received in connection with
8 an investigation under, or the administration or enforcement
9 of, the provisions of this Act shall be made available to any
10 third party or admitted or used as evidence in any civil
11 action other than an action for enforcement or review under
12 this Act nor shall the Secretary or any representative of the
13 Secretary be required by compulsory process to testify as
14 an expert in any civil action growing out of any matter men-
15 tioned in such record, determination, statement, or report,
16 except this subsection shall not be construed to bar the use
17 of compulsory process in requiring any representative of the
18 Secretary to testify on matters otherwise within his personal
19 knowledge concerning the facts involved in such civil action.

20 (b) In connection with any inspection or proceeding
21 under this Act no witness or any other person shall be re-
22 quired or permitted to divulge trade secrets or secret proc-

1 esses except as authorized by the person who owns such
2 secrets or processes.

3 PENALTIES

4 SEC. 10. (a) Any person who forcibly assaults, resists,
5 opposes, impedes, intimidates, or interferes with any person
6 while engaged in or on account of the performance of inspec-
7 tions or investigatory duties under this Act shall be fined
8 not more than \$5,000 or imprisoned not more than three
9 years, or both. Whoever, in the commission of any such acts,
10 uses a deadly or dangerous weapon, shall be fined not more
11 than \$10,000 or imprisoned not more than ten years, or both.
12 Whoever kills any person while engaged in or on account
13 of the performance of inspecting or investigating duties under
14 this Act shall be punished by imprisonment for any term
15 of years or for life.

16 (b) (1) Any person who makes a false statement or
17 representation of a material fact, knowing it to be false, or
18 who knowingly fails to disclose a material fact, in any docu-
19 ment, report, or other information required under the pro-
20 visions of section 7 (b), shall be fined not more than \$10,000
21 or imprisoned for not more than one year, or both.

22 (2) Any person who willfully makes a false entry in or
23 willfully conceals, withholds, or destroys any books, records,
24 or statements required under the provisions of section 7 (b)

1 shall be fined not more than \$10,000 or imprisoned for not
2 more than one year, or both.

3 (c) Any employer who willfully violates any standards
4 promulgated under section 4 of this Act may be assessed by
5 the Board, pursuant to an order issued under section 7 (a)
6 (1) of this Act, a civil penalty of not more than \$10,000
7 for each violation. In assessing the penalty, consideration
8 shall be given to the appropriateness of the penalty to the
9 size of the business of the person charged and the gravity of
10 the violation.

11 GOVERNMENT CONTRACTS

12 SEC. 11. (a) Each contract exceeding \$2,500 and re-
13 quiring or involving the employment of any person (1) to
14 which the United States or any agency or instrumentality
15 thereof, or the District of Columbia is a party, (2) which is
16 made for or on behalf of the United States, any agency or
17 instrumentality thereof, or the District of Columbia, or (3)
18 which is financed in whole or in part by loans or grants from,
19 or loans insured or guaranteed by, the United States or any
20 agency or instrumentality of the United States, shall include
21 the requirement that no part of such contract (or any sub-
22 contract thereunder) will be performed in any place or under
23 any condition which does not meet the applicable occupa-
24 tional safety and health standards. The applicable occupa-

1 tional safety and health standards shall be the standards
2 under section 4 of this Act, except that, to the extent that the
3 contract will be performed in a State in which there is in
4 effect a State plan approved under section 14 which provides
5 for the development of safety and health standards relating to
6 one or more occupational safety or health issues, the appli-
7 cable occupational safety and health standards relating to
8 such issues shall be those developed under the State plan
9 rather than those under section 4.

10 (b) In addition to the remedies otherwise provided in
11 this Act, the Board may declare ineligible to receive for
12 such period of time as the Board may prescribe, up to three
13 years, any contract of a type described in subsection (a) of
14 this section (whether or not the contract exceeds \$2,500)
15 any person or firm, or any firm, corporation, partnership, or
16 association in which such person or firm has a controlling in-
17 terest, which is found to have violated the requirements
18 under this Act. No such contract shall be awarded during
19 such period to such person or firm, or to any firm, corpora-
20 tion, partnership or association in which such person or firm
21 has a controlling interest. For the purpose of carrying out
22 the provisions of this subsection the Board shall distribute
23 a list to all agencies of the United States containing the

1 names of persons or firms declared ineligible to receive such
2 contracts and the periods of ineligibility.

3 (c) In addition to the remedies otherwise provided in
4 this Act, the Board may recommend to the appropriate con-
5 tracting agency that such agency cancel, terminate, suspend,
6 or cause to be canceled, or suspended, any contract made by
7 any contracting agency for the failure of the contractor to
8 comply with an order of the Board issued under section 7
9 (a) (1) of this Act for the breach or violation by such em-
10 ployer of the requirements under subsection (a) of this
11 section.

12 VARIATIONS, TOLERANCES, AND EXEMPTIONS

13 SEC. 12. The Board, on the record, after notice and
14 opportunity for hearing, may provide such reasonable limi-
15 tations and may make such rules and regulations allowing
16 reasonable variations, tolerances, and exemptions to and from
17 any or all of the provisions under this Act as it may find
18 advisable and proper in the public interest or to avoid serious
19 impairment of the conduct of Government business. The
20 Board shall keep an appropriately indexed record of all
21 variations, tolerances, and exemptions granted under this sec-
22 tion, which shall be open for public inspection.

1 AUTHORITY OF THE SECRETARY TO ISSUE RULES AND
2 REGULATIONS

SEC. 13. The Secretary shall prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

7 EFFECTIVE DATE; FEDERAL-STATE RELATIONSHIP

SEC. 14. (a) (1) Except as otherwise provided in this section, this Act shall be effective on the first day of the first month after the date of its enactment.

(2) Sections 7, 8, 10, and standards promulgated under section 4 shall not take effect until July 1, 1972. Section 11 shall not apply to contracts entered into before July 1, 1972.

(b) (1) No State safety or health standard in effect upon the effective date of this Act or which may become effective thereafter, shall be superseded by any standard promulgated under this Act except insofar as such State safety or health standard is in conflict with this Act.

(2) Any State safety or health standard in effect upon the effective date of this Act, or which may become effective thereafter, which affords employees significantly greater protection than a safety or health standard promulgated under this Act shall not thereby be construed or held to be in conflict.

1 (c) Any State which, at any time, desires to assume
2 responsibility for development and enforcement in such
3 State of occupational safety or health standards relating to
4 any occupational safety or health issue with respect to
5 which a Federal standard has been promulgated under sec-
6 tion 4 shall submit a State plan for the development of
7 such standards and their enforcement.

8 (d) The Secretary, after consultation with the Secre-
9 tary of Health, Education, and Welfare, shall approve the
10 plan submitted by a State under subsection (c), or any
11 modification thereof, if such plan—

12 (1) designates a State agency or agencies as the
13 agency or agencies responsible for administering the plan
14 throughout the State;

15 (2) provides for the development and enforcement
16 of safety and health standards relating to one or more
17 safety or health issues, which standards and their en-
18 forcement are or will be substantially as effective in pro-
19 viding safe and healthful employment and places of em-
20 ployment as provided in this Act;

21 (3) provides for the right of entry and inspection of
22 all workplaces subject to the Act;

23 (4) contains assurances that such agency or agen-

1 cies have or will have the legal authority and qualified
2 personnel necessary for the enforcement of such stand-
3 ards;

4 (5) gives assurances that such State will devote ade-
5 quate funds to the administration and enforcement of
6 such standards; and

7 (6) provides that the State agency will make
8 such reports to the Secretary in such form and contain-
9 ing such information, as the Secretary shall from time
10 to time require.

11 (e) The Secretary shall, on the basis of reports sub-
12 mitted by the State agency and his own inspections, make a
13 continuing evaluation of the manner in which each State hav-
14 ing a plan approved under this section is carrying out such
15 plan. Whenever the Secretary finds, after affording due no-
16 tice and opportunity for a hearing, that in the administration
17 of the State plan there is a failure to comply substantially
18 with any provision of the State plan (or any assurance con-
19 tained therein), he shall notify the State agency of his with-
20 drawal of approval of such plan and upon receipt of such
21 notice such plan shall cease to be in effect.

22 (f) The State may obtain a review of a decision of the
23 Secretary withdrawing approval of or rejecting its plan by
24 the United States court of appeals for the circuit in which
25 the State is located by filing in such court within thirty days

1 following receipt of notice of such decision a petition praying
2 that the action of the Secretary be modified or set aside in
3 whole or in part. A copy of such petition shall forthwith be
4 served upon the Secretary, and thereupon the Secretary
5 shall certify and file in the court the record upon which the
6 decision complained of was issued as provided in section
7 2112 of title 28, United States Code. Unless the court finds
8 that the Secretary's decision in rejecting a proposed State
9 plan or withdrawing his approval of such a plan to be arbitrary and capricious, the court shall affirm the Secretary's
10 decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title
11 28, United States Code.

15 (g) After the Secretary approves a State plan submitted under subsection (c), he may, but shall not be required
16 to, exercise his authority with respect to standards promulgated under section 4 of the Act until he determines, no
17 later than three years after the plan's approval under subsection (d), that, on the basis of actual operations under
18 the State plan, the State meets the criteria set forth in such subsection. Upon making such determination, the provisions
19 of sections 6, 7 (other than 7(b)), and 8 (other than
20 section 8(e)) relating to judicial review of standards issued

1 by the Board), and standards promulgated under section 4,
2 shall not apply with respect to any occupational safety or
3 health issues covered under the plan: *Provided*, That nothing
4 in this subsection shall prevent the Secretary from making
5 inspections at any time for the sole purpose of conducting
6 the continuing evaluation provided for in subsection (e) of
7 this section.

8 RELATIONSHIP TO OTHER FEDERAL PROGRAMS

9 SEC. 15. Nothing in this Act shall authorize the Board
10 or the Secretary to regulate, or shall apply to, working con-
11 ditions of employees with respect to whom other Federal
12 agencies, and State agencies acting under section 274 of
13 the Atomic Energy Act of 1954, as amended (42 U.S.C.
14 2021) have statutory authority to prescribe or enforce stand-
15 ards or regulations affecting occupational safety or health.

16 FEDERAL AGENCY SAFETY PROGRAMS AND
17 RESPONSIBILITIES

18 SEC. 16. (a) It shall be the responsibility of the head
19 of each Federal agency to establish and maintain an effective
20 and comprehensive occupational safety and health program
21 which is consistent with the standards promulgated by the
22 Board under section 4. The head of each agency shall (after
23 consultation with authorized representatives of the employees
24 thereof) —

25 (1) provide safe and healthful places and condi-

tions of employment, consistent with the standards set under section 4;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action; and

(4) make an annual report to the President with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902 (e) (2) of title 5, United States Code.

(b) The President shall transmit annually to the Senate and House of Representatives a report of the activities of each Federal agency under this section.

HEALTH RESEARCH AND RELATED ACTIVITIES

SEC. 17. (a) (1) The Secretary of Health, Education, and Welfare, after consultation with the Board and the Secretary, and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Board in order to

1 develop specific plans for such research, demonstrations, and
2 experiments as are necessary to produce criteria enabling the
3 Board to meet its responsibility for the formulation of safety
4 and health standards under this Act; and the Secretary of
5 Health, Education, and Welfare, on the basis of such re-
6 search, demonstrations, and experiments and any other in-
7 formation available to him, shall develop such criteria.

8 (3) The Secretary of Health, Education, and Welfare
9 shall also conduct special research, experiments, and demon-
10 strations relating to occupational safety and health as are
11 necessary to explore new problems, including those created
12 by new technology in occupational safety and health, which
13 may require ameliorative action beyond that which is other-
14 wise provided for in the operating provisions of this Act. The
15 Secretary of Health, Education, and Welfare shall also con-
16 duct research into the motivational and behavioral factors re-
17 lating to the field of occupational safety and health.

18 (b) The Secretary of Health, Education, and Welfare is
19 authorized after presenting written notice to make inspections
20 as provided in section 6 of this Act in order to carry out his
21 functions and responsibilities under this section.

22 (c) The Secretary is authorized to enter into contracts,
23 agreements, or other arrangements with appropriate public
24 agencies or private organizations for the purpose of conduct-
25 ing studies relating to his responsibilities under this Act.

1 In order to avoid any duplication of efforts under this section
2 the Secretary shall consult with the Secretary of Health,
3 Education, and Welfare.

4 (d) Within two years after the effective date of this
5 Act, the Secretary of Health, Education, and Welfare, in
6 consultation with the Secretary and the Board, shall complete
7 a comprehensive study and evaluation of occupational health
8 problems and transmit a report, including recommendations
9 thereon, to the President and to the Congress.

10 TRAINING AND EMPLOYEE EDUCATION

11 SEC. 18. (a) The Secretary of Health, Education, and
12 Welfare, after consultation with the Secretary of Labor and
13 with other appropriate Federal departments and agencies,
14 shall conduct, directly or by grants or contracts, (1) educa-
15 tion programs to provide an adequate supply of qualified
16 personnel to carry out the purposes of this Act, and (2)
17 informational programs on the importance of and proper use
18 of adequate safety equipment.

19 (b) The Secretary is also authorized to conduct (directly
20 or by grants or contracts) short-term training of personnel
21 engaged in work related to his responsibilities under this
22 Act.

23 (c) In order to encourage labor and management to
24 promote occupational safety and health, the Secretary shall
25 provide technical assistance to labor and management relat-

1 ing to the promotion of sound safety and health programs
2 and practices.

3 (d) In consultation with the Secretary of Health, Edu-
4 cation, and Welfare, the Secretary shall provide for the es-
5 tablishment and supervision of programs for the education
6 and training of employers and employees in the recognition,
7 avoidance, and prevention of unsafe or unhealthful working
8 conditions in employments covered by this Act, and to con-
9 sult with and advise employers as to effective means of pre-
10 venting occupational injuries and illnesses.

11 ADMINISTRATION; NATIONAL ADVISORY COMMITTEE

12 SEC. 19. (a) In carrying out his responsibilities under
13 this Act, the Secretary is authorized to—

14 (1) use, with the consent of any Federal agency,
15 the services, facilities, and employees of such agency
16 with or without reimbursement, and with the consent
17 of any State or political subdivision thereof, accept and
18 use the services, facilities, and employees of the agencies
19 of such State or subdivision with or without reimburse-
20 ment; and

21 (2) employ experts and consultants or organiza-
22 tions thereof as authorized by section 3109 of title 5,
23 United States Code, and allow them while away from
24 their homes or regular places of business, travel expenses
25 (including per diem in lieu of subsistence) as authorized

1 by section 5703 (b) of title 5, United States Code, for
2 persons in the Government service employed intermit-
3 tently, while so employed.

4 (b) (1) There is hereby established a National Ad-
5 visory Committee on Occupational Safety and Health (here-
6 after in this subsection referred to as the "Committee")
7 consisting of twelve members appointed by the Secretary,
8 four of whom are to be designated by the Secretary of Health,
9 Education, and Welfare, without regard to the civil service
10 laws and composed equally of representatives of manage-
11 ment, labor and the public. The Secretary shall designate
12 one of the public members as Chairman. The members shall
13 be selected upon the basis of their experience and competence
14 in the field of occupational safety and health.

15 (2) The Committee shall advise, consult with, and make
16 recommendations to the Secretary and the Secretary of
17 Health, Education, and Welfare on matters relating to the
18 administration of the Act. The Committee shall hold no
19 fewer than two meetings during each calendar year.

20 (3) The members of the Committee shall be compen-
21 sated in accordance with the provisions of subsection (a) (2)
22 of this section.

23 (4) The Secretary shall furnish to the Committee an
24 executive secretary and such secretarial, clerical, and other

1 services as are deemed necessary to the conduct of its
2 business.

3 GRANTS TO THE STATES

4 SEC. 20. (a) The Secretary is authorized, during the
5 fiscal year ending June 30, 1971, and the two succeeding
6 fiscal years, to make grants to the States to assist them (1)
7 in identifying their needs and responsibilities in the area
8 of occupational safety and health, (2) in developing State
9 plans under section 14, or (3) in developing plans for—

10 (1) establishing systems for the collection of in-
11 formation concerning the nature and frequency of
12 occupational injuries and diseases;

13 (2) increasing the expertise and enforcement cap-
14 abilities of their personnel engaged in occupational safety
15 and health programs; or

16 (3) otherwise improving the administration and en-
17 forcement of State occupational safety and health laws,
18 including standards thereunder, consistent with the ob-
19 jectives of this Act.

20 (b) The Secretary is authorized, during the fiscal year
21 ending June 30, 1971, and the two succeeding fiscal years,
22 to make grants to the States for experimental and demon-
23 stration projects consistent with the objectives set forth in
24 subsection (a) of this section.

25 (c) For receipt of any grant made by the Secretary

1 under this section, the Governor of the State shall designate
2 the appropriate State agency, or agencies.

3 (d) Any State agency, or agencies, designated by the
4 Governor of the State, desiring a grant under this section
5 shall submit an application therefor to the Secretary.

6 (e) The Secretary shall review the application, and
7 shall, after consultation with the Secretary of Health, Edu-
8 cation, and Welfare, approve or reject such application.

9 (f) The Federal share for each State grant under sub-
10 section (a) or (b) of this section may be up to 90 per
11 centum of the State's total cost.

12 (g) The Secretary is authorized to make grants to the
13 States to assist them in administering and enforcing programs
14 for occupational safety and health contained in State plans
15 approved by the Secretary pursuant to section 14 of this Act.
16 The Federal share for each State grant under this subsection
17 may be up to 50 per centum of the State's total cost.

18 (h) Prior to June 30, 1972, the Secretary shall, after
19 consultation with the Secretary of Health, Education, and
20 Welfare, transmit a report to the President and to Congress,
21 describing the experience under the program and making
22 any recommendations as he may deem appropriate.

23 EFFECT ON OTHER LAWS

24 SEC. 21. (a) Except as provided in subsection (c) of
25 this section nothing in this Act shall be construed as re-

1 pealing or modifying in any way any other Federal laws
2 prescribing safety and health requirements.

3 (b) Nothing in this Act shall be construed or held to
4 supersede or in any manner affect the functions or authority
5 of the Secretary of Health Education, and Welfare under
6 any other law, or to affect any workmen's compensation
7 law or to enlarge or diminish or affect in any other manner
8 the common law or statutory right, duties, or liabilities of
9 employers and employees under any law with respect to
10 injuries, occupational or other diseases, or death of employees
11 arising out of, or in the course of employment.

12 (c) The safety and health standards promulgated under
13 the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et
14 seq.), the Service Contract Act (41 U.S.C. 351 et seq.), and
15 the National Foundation on Arts and Humanities Act (20
16 U.S.C. 951 et seq.), are deemed repealed and rescinded on
17 the effective date of corresponding standards promulgated
18 under this Act, as determined by the Secretary of Labor to
19 be corresponding standards. The safety and health provisions
20 of the Walsh Healey Public Contracts Act (41 U.S.C. 35 et
21 seq.), the Service Contract Act (41 U.S.C. 351 et seq.),
22 and the National Foundation on Arts and Humanities Act
23 (20 U.S.C. 951 et seq.), are deemed repealed and rescinded
24 effective July 1, 1975.

41

AUDITS

1
2 SEC. 22. (a) Each recipient of a grant under this Act
3 shall keep such records as the Secretary shall prescribe, in-
4 cluding records which fully disclose the amount and disposi-
5 tion by such recipient of the proceeds of such grants, the total
6 cost of the project or undertaking in connection with which
7 such grant is made or used, and the amount of that portion
8 of the cost of the project or undertaking supplied by other
9 sources, and such other records as will facilitate an effective
10 audit.

11 (b) The Secretary and the Comptroller General of the
12 United States, or any of their duly authorized representa-
13 tives, shall have access for the purpose of audit and examina-
14 tion to any books, documents, papers, and records of the re-
15 cipients of any grant under this Act that are pertinent to any
16 such grant.

REPORTS

17
18 SEC. 23. Within one hundred and twenty days following
19 the convening of the first session of each Congress, the Sec-
20 retary, the Board, and the Secretary of Health, Education,
21 and Welfare shall prepare and submit to the President for
22 transmittal to the Congress biennial reports upon the sub-
23 ject matter of this Act, the progress concerning the achieve-
24 ment of its purposes, the needs and requirements in the field

1 of occupational safety and health, and any other relevant
2 information, and including any recommendations they may
3 deem appropriate.

4 **APPROPRIATIONS**

5 **SEC. 24.** There are hereby authorized to be appropriated
6 such sums as may be necessary to carry out the purposes of
7 this Act.

8 **SEPARABILITY**

9 **SEC. 25.** If any provision of this Act, or the application
10 of such provision to any person or circumstance, shall be held
11 invalid, the remainder of this Act, or the application of such
12 provision to persons or circumstances other than those as to
13 which it is held invalid, shall not be affected thereby.

91st CONGRESS
2D SESSION

H. R. 16785

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1970

Mr. DANIELS of New Jersey (for himself, Mr. PERKINS, Mr. O'HARA, Mr. HATHAWAY, Mr. WILLIAM D. FORD, Mr. MEEDS, Mr. BURTON of California, Mrs. GREEN of Oregon, Mr. HAWKINS, Mr. GAYDOS, Mr. THOMPSON of New Jersey, Mr. DENT, Mr. PUCINSKI, Mr. BRADEMANS, Mr. CARY, Mrs. MINK, Mr. SCHEUER, Mr. STOKES, Mr. CLAY, and Mr. POWELL) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Occupational Safety and
- 4 Health Act".

1 CONGRESSIONAL FINDINGS AND PURPOSE

2 SEC. 2. (a) The Congress finds that personal injuries
3 and illnesses arising out of work situations impose a sub-
4 stantial burden upon, and are a hindrance to, interstate com-
5 merce in terms of lost production, wage loss, medical ex-
6 penses, and disability compensation payments.

7 (b) The Congress declares it to be its purpose and
8 policy, through the exercise of its powers to regulate com-
9 merce among the several States and with foreign nations
10 and to provide for the general welfare, to assure so far as
11 possible every working man and woman in the Nation safe
12 and healthful working conditions and to preserve our human
13 resources—

14 (1) by encouraging employers and employees in
15 their efforts to reduce the number of occupational safety
16 and health hazards at their places of employment, and
17 to stimulate employers and employees to institute new
18 and to perfect existing programs for providing safe and
19 healthful working conditions;

20 (2) by building upon advances already made
21 through employer and employee initiative for providing
22 safe and healthful working conditions;

23 (3) by providing for research in the field of occupa-
24 tional safety and health, including the psychological
25 factors involved, and by developing innovative methods,

1 techniques and approaches for dealing with occupational
2 safety and health problems;

3 (4) by exploring ways to discover latent diseases,
4 establishing causal connections between diseases and
5 work in environmental conditions, and conducting other
6 research relating to health problems, in recognition of
7 the fact that occupational health standards present prob-
8 lems often different from those involved in occupational
9 safety;

10 (5) by providing for training programs to increase
11 the number and competence of personnel engaged in the
12 field of occupational safety and health;

13 (6) by providing for the development, promulga-
14 tion, and effective enforcement of occupational safety and
15 health standards;

16 (7) by encouraging the States to assume the fullest
17 responsibility for the administration and enforcement of
18 their occupational safety and health laws by providing
19 grants to the States to assist in identifying their needs
20 and responsibilities in the area of occupational safety
21 and health, to develop plans in accordance with the pro-
22 visions of this Act, to improve the administration and
23 enforcement of State occupational safety and health laws,
24 and to conduct experimental and demonstration projects
25 in connection therewith;

(8) by providing for appropriate accident and health reporting procedures which will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem; and

(9) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than a State as defined in paragraph (6) of this subsection), or between points in the same State but through a point outside thereof.

(3) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(4) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(5) The term "employee" means an employee of an

1 employer who is employed in a business of his employer
2 which affects commerce.

3 (6) The term "State" includes a State of the United
4 States, the District of Columbia, Puerto Rico, the Virgin
5 Islands, American Samoa, Guam, and the Trust Territory of
6 the Pacific Islands.

7 (7) The term "occupational safety and health stand-
8 ard" means a standard which requires conditions, or the adop-
9 tion or use of one or more practices, means, methods, opera-
10 tions, or processes, reasonably necessary or appropriate to
11 provide safe or healthful employment and places of employ-
12 ment.

13 (8) The term "national consensus standard" means any
14 occupational safety and health standard or modification
15 thereof which (A) has been adopted and promulgated by a
16 nationally recognized standards-producing organization under
17 procedures whereby it can be determined by the Secretary,
18 that persons interested and affected by the scope or
19 provisions of the standard have reached substantial agree-
20 ment on its adoption, (B) was formulated in a manner which
21 afforded an opportunity for diverse views to be considered,
22 and (C) has been designated as such a standard by the
23 Secretary, after consultation with other appropriate Federal
24 agencies.

25 (9) The term "established Federal standard" means

1 any operative occupational safety and health standard estab-
2 lished by any agency of the United States and presently in
3 effect, or contained in any Act of Congress in force on the
4 date of enactment of this Act.

5 APPLICABILITY OF ACT

6 SEC. 4. (a) This Act shall apply only with respect to
7 employment performed in a workplace in a State, Wake
8 Island, Outer Continental Shelf lands defined in the Outer
9 Continental Shelf Lands Act, Johnston Island, or the Canal
10 Zone. The Secretary of the Interior shall, by regulation, pro-
11 vide for judicial enforcement of this Act by the courts estab-
12 lished for areas in which there are no Federal district courts
13 having jurisdiction.

14 (b) (1) Nothing in this Act shall be deemed to repeal or
15 modify any other Federal law prescribing safety or health
16 requirements or the standards, rules, or regulations promul-
17 gated pursuant to such law.

18 (2) The Secretary shall, within three years after the
19 effective date of this Act, report to the Congress his recom-
20 mendations for legislation to avoid unnecessary duplication
21 and to achieve coordination between this Act and other Fed-
22 eral laws.

23 DUTIES OF EMPLOYERS

24 SEC. 5. Each employer—

25 (1) shall furnish to each of his employees employ-

1 ment and a place of employment which is safe and
2 healthful, and

3 (2) shall, except as provided in section 17, com-
4 ply with occupational safety and health standards and
5 with interim standards which are promulgated under
6 this Act.

7 **INTERIM SAFETY AND HEALTH STANDARDS**

8 SEC. 6. The Secretary shall, as soon as practicable dur-
9 ing the period beginning with the effective date of this Act
10 and ending two years after such date, by rule promulgate
11 as an interim standard, any national consensus standard, any
12 established Federal standard then in effect (not limited to
13 its present area of application), and any standard proposed
14 by a nationally recognized standards-producing organization
15 by other than a consensus method, unless he determines that
16 the promulgation of such a standard as an interim standard
17 would not result in improved safety or health for specifi-
18 cally designated employees. In the event of conflict among
19 any such standards, the Secretary shall promulgate the
20 standard which assures the greatest protection of the safety
21 or health of the affected employees. No such standard shall
22 be promulgated without a public hearing with respect thereto
23 at which interested persons are afforded an opportunity to
24 express their views, but in other respects section 553 of title

1 5. United States Code, shall be applicable in carrying out
2 this section. Each interim standard shall stay in effect until
3 superseded by another interim standard or until superseded
4 pursuant to a rule issued and in effect under section 7. The
5 Secretary shall commence (by appointing an advisory com-
6 mittee) a proceeding under section 7 for the promulgation
7 of an occupational safety and health standard dealing with
8 the same subject matter as each interim standard or stand-
9 ards, and any additional occupational safety or health issues
10 he deems relevant, within ninety days after he promulgates
11 such interim standard.

12 **OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

13 **SEC. 7.** (a) The Secretary may, by rule, promulgate,
14 modify, or revoke any occupational safety and health stand-
15 ard in the following manner:

16 (1) Whenever the Secretary upon the basis of informa-
17 tion submitted to him in writing by an interested person, a
18 representative of an organization of employers or employees,
19 a nationally recognized standards-producing organization, the
20 Secretary of Health, Education, and Welfare, a State, or a
21 political subdivision of a State, or on the basis of information
22 otherwise available to him, determines that such a rule
23 should be prescribed in order to serve the objectives of this
24 Act, and whenever he is required to do so by section 6, the
25 Secretary shall appoint an advisory committee under section

1 8 (b) of this Act, which shall submit to him its recommenda-
2 tions regarding the rule to be prescribed which will carry out
3 the purposes of this Act, which recommendations shall be
4 published by him in the Federal Register, either as part of a
5 subsequent notice of proposed rulemaking or separately. The
6 recommendations of an advisory committee shall be sub-
7 mitted to the Secretary within two hundred and seventy days
8 from its appointment, or within such longer or shorter period
9 as may be prescribed by the Secretary, but in no event may
10 he prescribe a period which is longer than one year and
11 three months.

12 (2) After the submission of such recommendations, the
13 Secretary shall, as soon as practicable and in any event
14 within four months, schedule and give notice of a hearing on
15 the recommendations of the advisory committee and any
16 other relevant subjects and issues. In the event that the
17 advisory committee fails to submit recommendations within
18 two hundred and seventy days from its appointment (or
19 such longer or shorter period as the Secretary has prescribed)
20 the Secretary shall make a proposal relevant to the purpose
21 for which the advisory committee was appointed, and shall
22 within four months schedule and give notice of hearing
23 thereon. In either case, notice of the time, place, subjects,
24 and issues of any such hearing shall be published in the Fed-

1 eral Register thirty days prior to the hearing and shall con-
2 tain the recommendations of the advisory committee or the
3 proposal made in absence of such recommendation. Prior to
4 the hearing interested persons shall be afforded an oppor-
5 tunity to submit comments upon any recommendations of
6 the advisory committee or other proposal. Only persons who
7 have submitted such comments shall have a right at such
8 hearing to submit oral arguments, but nothing herein shall
9 be deemed to prevent any person from submitting written
10 evidence, data, views, or arguments.

11 (3) Upon the entire record before him, including the
12 advisory committee recommendations and any evidence, data,
13 views, and arguments submitted in connection with the hear-
14 ing, the Secretary shall within sixty days after completion
15 of the hearing issue a rule promulgating, modifying, or re-
16 voking an occupational safety and health standard or make
17 a determination that a rule should not be issued. Such a
18 rule may contain a provision delaying its effective date
19 for such period (not in excess of ninety days) as the Secre-
20 tary determines may be appropriate to insure that affected
21 employers and employees will be informed of the existence
22 of the standard and of its terms and that employers affected
23 are given an opportunity to familiarize themselves and their
24 employees with the requirements of the standard.

25 (b) Any affected employer may apply to the Secretary

1 for a rule or order for an exemption from clause (2) of sec-
2 tion 5. Affected employees shall be given notice of each such
3 application and an opportunity to participate in a hearing.
4 The Secretary shall issue such rule or order if he determines
5 on the record, after an opportunity for an inspection and a
6 hearing, that the proponent of the exemption has demonstrated
7 by a preponderance of the evidence that the conditions, prac-
8 tices, means, methods, operations, or processes used or pro-
9 posed to be used by an employer will provide employment
10 and places of employment to his employees which are as
11 safe and healthful as those which would prevail if he com-
12 plied with the standard. The rule or order so issued shall
13 prescribe the conditions the employer must maintain, and
14 the practices, means, methods, operations, and processes
15 which he must adopt and utilize to the extent they differ
16 from the standard in question. Such a rule or order may be
17 modified or revoked upon application by an employer, em-
18 ployees, or by the Secretary on his own motion in the
19 manner prescribed for its issuance under this subsection at
20 any time after six months after its issuance.

21 (c) Whenever the Secretary promulgates any standard,
22 makes any rule, order, decision, grants any exemption or
23 extension of time, or compromises, mitigates, or settles any
24 penalty assessed under this Act, he shall include a statement

1 of the reasons for such action, and such statement shall be
2 published in the Federal Register.

3 ADMINISTRATION; ADVISORY COMMITTEES

4 SEC. 8. (a) In carrying out his responsibilities under
5 this Act, the Secretary is authorized to—

6 (1) use, with the consent of any Federal agency,
7 the services, facilities, and employees of such agency
8 with or without reimbursement, and with the consent of
9 any State or political subdivision thereof, accept and
10 use the services, facilities, and employees of the agencies
11 of such State or subdivision with reimbursement; and

12 (2) employ experts and consultants or organiza-
13 tions thereof as authorized by section 3109 of title 5,
14 United States Code, except that contracts for such
15 employment may be renewed annually; compensate indi-
16 viduals so employed at rates not in excess of the rate
17 specified at the time of service for grade GS-48 in section
18 5332 of title 5, United States Code, including traveltime;
19 and allow them while away from their homes or regular
20 places of business, travel expenses (including per diem in
21 lieu of subsistence) as authorized by section 5703 of title
22 5, United States Code, for persons in the Government
23 service employed intermittently, while so employed.

24 (b) The Secretary shall appoint advisory committees to
25 recommend occupational safety and health standards under

1 section 7 (a) of this Act before the commencement of pro-
2 ceedings thereunder. Each such advisory committee shall
3 consist of not more than fifteen members and shall include
4 as a member one or more designees of the Secretary of
5 Health, Education, and Welfare, and shall include among
6 its members an equal number of persons qualified by experi-
7 ence and affiliation to present the viewpoint of the employers
8 involved, and of persons similarly qualified to present the
9 viewpoint of the workers involved, as well as one or more
10 representatives of health and safety agencies of the States.
11 An advisory committee may also include such other persons
12 as the Secretary may appoint who are qualified by knowledge
13 and experience to make a useful contribution to the work of
14 the committee, including one or more representatives of pro-
15 fessional organizations of technicians or professionals special-
16 izing in occupational safety or health, and one or more repre-
17 sentatives of nationally recognized standards-producing or-
18 ganizations, but the number of persons so appointed to any
19 advisory committee shall not exceed the number appointed
20 to such committee as representatives of Federal and State
21 agencies. Persons appointed to advisory committees from
22 private life shall be compensated in the same manner as con-
23 sultants or experts under subsection (a) (2) of this section.
24 The Secretary shall pay to any State which is the employer
25 of a member of the committee who is a representative of

1 the health or safety agency of that State, reimbursement suf-
2 ficient to cover the actual cost to the State resulting from
3 such representative's membership on the committee. Any
4 meeting of the committee shall be open to the public and an
5 accurate record shall be kept and made available to the
6 public. No member of the committee (other than representa-
7 tives of employers and employees) shall have an economic
8 interest in any proposed rule.

9 (c) (1) The Secretary and the Secretary of Health,
10 Education, and Welfare shall appoint a National Advisory
11 Committee on Occupational Safety and Health (hereafter in
12 this subsection referred to as the "Committee"). The Com-
13 mittee shall consist of twenty members appointed without re-
14 gard to the civil service laws and composed equally of rep-
15 resentatives of management, labor, occupational safety and
16 occupational health professions, and of the public. The Sec-
17 retary shall appoint all members of the Committee except for
18 occupational health representatives who shall be appointed
19 by the Secretary of Health, Education, and Welfare. The
20 Secretary shall designate one of the public members as Chair-
21 man. The members shall be selected upon the basis of their
22 experience and competence in the field of occupational safety
23 and health.

24 (2) The Committee shall advise, consult with, and make
25 recommendations to, the Secretaries of Labor and Health,

1 Education, and Welfare on matters relating to the imple-
2 mentation of this Act. The Committee shall hold no fewer
3 than two meetings during each calendar year. All meetings of
4 the Committee shall be open to the public and a transcript
5 shall be kept and made available for public inspection.

6 (3) The members of the Committee shall be compen-
7 sated in accordance with the provisions of subsection (a) (2)
8 of this section.

9 (4) The Secretary shall furnish to the Committee an
10 executive secretary and such secretarial, clerical, and other
11 services as are deemed necessary to the conduct of its
12 business.

13 INSPECTIONS, INVESTIGATIONS, AND REPORTS

14 SEC. 9. (a) In order to carry out the purposes of this
15 Act, the Secretary, upon presenting appropriate credentials
16 to the owner, operator, or agent in charge, is authorized—

17 (1) to enter upon at reasonable times any work-
18 place where work is performed to which this Act ap-
19 plies; and

20 (2) to inspect and investigate during regular work-
21 ing hours and at other reasonable times, and within
22 reasonable limits and in a reasonable manner, any such
23 place and all pertinent conditions, structures, machines,
24 apparatus, devices, equipment, and materials therein, and

1 to question any such employer, owner, operator, agent
2 or employee.

3 (b) For the purposes of any investigation provided for
4 in this title, the provisions of sections 9 and 10 (relating
5 to the attendance of witnesses and the production of books,
6 papers, and documents) of the Federal Trade Commission
7 Act of September 16, 1914 (15 U.S.C. 49, 50), are hereby
8 made applicable to the jurisdiction, powers, and duties of
9 the Secretary or any officers designated by him.

10 (c) Each employer shall make, keep, and preserve,
11 and make available to the Secretary such record of his activi-
12 ties concerning the requirements of this Act, and shall make
13 reports therefrom to the Secretary, as he may prescribe by
14 regulation or order as necessary or appropriate for the
15 enforcement of this Act. The Secretary shall also make such
16 regulations as may be necessary to assure that employers
17 keep their employees continuously informed of their rights,
18 privileges, and obligations under this Act. The Secretary in
19 cooperation with the Secretary of Health, Education, and
20 Welfare shall make regulations requiring employers to keep
21 records of all work-related injuries, diseases, and ailments
22 which arise from conditions present in the working
23 environment.

24 (d) Any information obtained by the Secretary, the
25 Secretary of Health, Education, and Welfare, or a State

1 agency under this Act shall be obtained with a minimum
2 burden upon employers, especially those operating small
3 businesses. Unnecessary duplication of efforts in obtaining
4 information shall be reduced to the maximum extent
5 feasible.

6 (e) A representative of the employer and a representa-
7 tive authorized by his employees shall be given an opportu-
8 nity to accompany any person who is making an inspection
9 under subsection (a) of any workplace.

10 CITATIONS FOR VIOLATIONS

11 SEC. 10. (a) If, upon inspection or investigation, the
12 Secretary determines that an employer has violated clause
13 (2) of section 5, any rule or order issued under section 7 (b) ,
14 or any regulation prescribed under section 9 (c) , and that a
15 serious danger potential exists by reason of any such violation,
16 he shall issue a citation forthwith to the employer for such
17 violation. Each such citation shall (1) be in writing, (2)
18 describe with particularity the nature of the violation, in-
19 cluding a reference to the provision of the standard, rule,
20 order, or regulation alleged to have been violated, and (3)
21 the period of time within which it must be corrected.

22 (b) If, upon inspection or investigation, the Secretary
23 determines that an employer has violated clause (1) of sec-
24 tion 5 and a serious danger potential exists, or has violated

any regulation prescribed under section 9 (c) or any rule or order issued under section 7 (b), but that no serious danger potential exists by reason of such violation, he shall issue a citation forthwith to the employer for such violation. Each such citation shall (1) be in writing, (2) describe with particularity the nature of the violation, including a reference to the provision of the standard, duty, rule, order, or regulation alleged to have been violated, and (3) the period of time within which it must be corrected.

(c) If, upon inspection or investigation, the Secretary determines that an employer has violated clauses (1) or (2) of section 5, and specifically determines, together with his reasons, that no serious danger potential exists by reason of such violation, he shall issue a citation forthwith to the employer for such violation. Each such citation shall (1) be in writing, (2) describe with particularity the nature of the violation, including a reference to the provision of the standard, rule, order, duty, or regulation alleged to have been violated.

(d) Where a citation is issued under subsection (a) or (b) for a violation which might cause cumulative or latent ill effects, such citation shall specify, where feasible, a period during which employer's must reasonably measure the exposure of employees to such danger.

(e) Each citation issued under this section or a copy

1 or copies thereof shall be prominently posted (as prescribed
2 in regulations made under section 9 (c)) at or near each
3 place a violation referred to in the citation occurred.

4 (f) For purposes of this Act a "serious danger
5 potential" shall be deemed to exist in a place of employ-
6 ment if there is a substantial probability that at any time
7 death or serious physical harm could result from a condition
8 which exists, or from one or more practices, means, methods,
9 operations, or processes which have been adopted or are
10 in use, in such place of employment.

11 PROCEDURES FOR ENFORCEMENT

12 SEC. 11. (a) If, after an inspection or investigation,
13 the Secretary issues a citation under section 10 (a) or (b),
14 the Secretary shall, within ten working days of the termina-
15 tion of such inspection or investigation, notify the employer
16 by certified mail of the penalty, if any, proposed to be
17 assessed under section 15 and that he has fifteen working
18 days within which to notify the Secretary that he wishes
19 to contest the citation or proposed assessment of penalty. If
20 such notice is not issued by the Secretary within such ten-
21 day period then such citation and proposed assessment of
22 penalty shall be void. If, within fifteen working days from
23 the receipt of such a notice, the employer fails to notify
24 the Secretary that he intends to contest the citation or pro-

1 posed assessment of penalty, the citation and the assessment,
2 as proposed, shall be final and not subject to review by any
3 court or agency, and for purposes of subsection (c) shall be
4 considered an order issued by the Secretary under subsection
5 (b).

6 (b) If an employer notifies the Secretary that he in-
7 tends to contest a citation issued under section 10 (a) or
8 (b) or proposed assessment of penalty or if the Secretary
9 determines an employer has failed to correct a violation for
10 which such a citation has been issued within the period per-
11 mitted for its correction (which period shall not begin to
12 run until the termination of proceedings under this subsec-
13 tion), the Secretary shall afford an opportunity for a hearing
14 (in accordance with section 554 of title 5, United States
15 Code, but without regard to subsection (a) (2) of such sec-
16 tion), and shall, if he determines such citation is valid, issue
17 an order, based on findings of fact, confirming, denying, or
18 modifying the citation or assessment of penalty, or, if he de-
19 termines the employer has failed to correct such violation
20 within such period, issue such order, based on findings of
21 fact, as may be necessary for the correction of the violation
22 for which the citation was issued, and for the assessment
23 and collection of any penalty under section 15 (a), (b),
24 or (c). The Secretary shall give such person the information
25 required by section 554 (b) at such time as least fifteen days

1 prior to hearing. In proceedings under this subsection, the
2 Secretary shall consider, among other things, the validity
3 of any standard, rule, order, or regulation alleged to have
4 been violated, and the reasonableness of the period of time
5 permitted for the correction of the violation. For purposes
6 of this subsection, an employer shall not be deemed to have
7 violated a citation issued for a violation of clause (1) of sec-
8 tion 5 where a serious danger potential exists if the employer
9 is in compliance with an applicable interim standard, occu-
10 pational health or safety standard, or State plan applicable
11 under section 17 (c).

12 (c) The Secretary shall have power, upon issuance
13 of an order under subsection (b), to petition any
14 United States district court within the district where a vio-
15 lation is alleged to have occurred or where the employer
16 has its principal office, for appropriate relief. The United
17 States district courts shall have jurisdiction to enforce
18 (by restraining order, injunction, or otherwise) any order
19 of the Secretary issued under subsection (b). Except in
20 the case of a order which has become final under section
21 11 (a), any person adversely affected or aggrieved by an
22 order of the Secretary issued under subsection (b) may
23 obtain review of such order by the United States district court
24 for the district where the violation is alleged to have occurred

1 or where the employer has its principal office by filing in such
2 court within thirty days following the issuance of such order
3 a petition praying that the action of the Secretary be modified
4 or set aside in whole or in part. A petition for review by
5 the court shall not stay an order of the Secretary under sub-
6 section (b) unless otherwise provided by the court.

7 **PROCEDURES TO COUNTERACT IMMINENT DANGERS**

8 **SEC. 12. (a)** If an inspection or investigation of a
9 place of employment discloses that imminent danger
10 potential exists in such place of employment, the Secretary
11 may issue an order prohibiting the employment or presence
12 of any individuals in locations or under conditions where
13 such an imminent danger potential exists, except to correct
14 or remove it. Such order may remain in effect for not more
15 than five days from the date of its issuance.

16 (b) If, upon inspection or investigation of a place of
17 employment, the Secretary determines that an imminent
18 danger potential exists in such place of employment, the
19 Secretary may bring a civil action in the United States dis-
20 trict court for the district where the imminent danger poten-
21 tial exists or where the employer has its principal office for
22 a temporary restraining order or injunction prohibiting the
23 employment or presence of any individual in locations or
24 under conditions where such an imminent danger potential

1 exists, except to correct or remove it. An action may be
2 brought under this subsection while an order of the Secre-
3 tary under subsection (a) is in effect. If, in a proceeding
4 under section 11, it is finally determined that any condition
5 which existed, or any practice, means, method, operation,
6 or process which was adopted or in use in a place of employ-
7 ment did not violate section 5, and it was upon the basis
8 of the existence of such condition or the adoption of
9 such practice, means, method, operation, or process that
10 an order was issued under this subsection, then such order
11 shall no longer be in effect.

12 (c) If the Secretary arbitrarily or capriciously issues
13 or fails to issue an order under subsection (a) and any
14 person is injured thereby either physically or financially by
15 reason of such order or failure to issue such order, such
16 person may bring an action against the United States in the
17 Court of Claims in which he may recover the damages he
18 has sustained, including reasonable court costs and attorneys'
19 fees.

20 (d) For purposes of this section an imminent danger
21 potential shall be deemed to exist in a place of employment
22 if such danger could reasonably be expected to cause death
23 or serious physical harm before the imminence of such danger
24 can be eliminated.

1 REPRESENTATION IN CIVIL LITIGATION

2 SEC. 13. Except as provided in section 518 (a) of title
3 28, United States Code, relating to litigation before the
4 Supreme Court and the Court of Claims, the Solicitor of
5 Labor may appear for and represent the Secretary in any
6 civil litigation brought under this Act but all such litigation
7 shall be subject to the direction and control of the Attorney
8 General.

9 CONFIDENTIALITY OF TRADE SECRETS

10 SEC. 14. All information reported to or otherwise ob-
11 tained by the Secretary or his representative in connection
12 with any inspection or proceeding under this Act which con-
13 tains or which might reveal a trade secret referred to in sec-
14 tion 1905 of title 18 of the United States Code shall be con-
15 sidered confidential for the purpose of that section, except
16 that such information may be disclosed to other officers or
17 employees concerned with carrying out this Act or when
18 relevant in any proceeding under this Act.

19 PENALTIES

20 SEC. 15. (a) Any employer who (1) receives a citation
21 under section 10 (a), (2) fails to correct a violation for
22 which a citation has been issued under section 10 (a) within
23 the period permitted for its correction (which period shall
24 not begin to run until the termination of any proceedings
25 under section 11 (b)), or (3) violates an order issued under

1 section 12 (a) , shall be assessed by the Secretary, pursuant
2 to an order issued under section 11 (b) , a civil penalty of
3 not more than \$1,000 for each violation. Each violation shall
4 be a separate offense. When the violation is of a continuing
5 nature, each day during which it continues after a reasonable
6 time specified in an initial decision following the hearing
7 held under section 11 (b) shall constitute a separate offense
8 except during the time a review of the order under section
9 11 (b) may be taken, or such review is pending and during
10 the time allowed in the order under section 11 (b) for cor-
11 rection. The Secretary may compromise, mitigate, or settle
12 any claim for civil penalties. In assessing the penalty con-
13 sideration shall be given to the appropriateness of the
14 penalty, to the size of the business of the person charged, to
15 the gravity of the violation, and to the history of previous
16 violations.

17 (b) Any employer who receives a citation under section
18 10 (b) , or fails to correct a violation for which a citation has
19 been issued under section 10 (b) within the time prescribed
20 for its correction (which period shall not begin to run until
21 the termination of any proceedings under section 11 (b)) ,
22 may be assessed by the Secretary, pursuant to an order
23 issued under section 11 (b) , a civil penalty of not more
24 than \$1,000 for each violation. Each violation shall be

71 a separate offense. When the violation is of a continuing
72 nature, each day during which it continues after a reasonable
73 time specified in an initial decision following the hearing held
74 under section 11 (b) shall constitute a separate offense except
75 during the time a review of the order under section 11 (b)
76 may be taken, or such review is pending and during the time
77 allowed in the order under section 11 (b), for correction. The
78 Secretary may compromise, mitigate, or settle any claim for
79 civil penalties. In assessing the penalty consideration shall
80 be given to the appropriateness of the penalty, to the size of
81 the business of the person charged, to the gravity of the viola-
82 tion, and to the history of previous violations.

83 (c) Any employer who willfully violates any standards
84 promulgated under sections 6 and 7 of this Act may be as-
85 sessed by the Secretary, pursuant to an order issued under
86 section 11, of this Act, a civil penalty of not more than
87 \$10,000 for each violation. In assessing the penalty, con-
88 sideration shall be given to the appropriateness of the penalty
89 to the size of the business of the person charged, to the
90 gravity of the violation, and to the history of previous
91 violations.

92 (d) Any person who forcibly assaults, resists, opposes,
93 opposes, intimidates, or interferes with any person while
94 engaged in or on account of the performance of inspections
95 or investigatory duties under this Act shall be fined not more

1 than \$5,000 or imprisoned not more than three years, or
2 both. Whoever, in the commission of any such acts, uses a
3 deadly or dangerous weapon, shall be fined not more than
4 \$10,000 or imprisoned not more than ten years or both.
5 Whoever kills any person while engaged in or on account of
6 the performance of inspecting or investigating duties under
7 this Act shall be punished by imprisonment for any term
8 of years or for life.

9 (e) Advance notice may be given of investigations
10 necessary for the Secretary and the Secretary of Health,
11 Education, and Welfare to effectively obtain, utilize, or
12 disseminate information relating to health or safety condi-
13 tions, the causes of accidents, diseases, and physical impair-
14 ments; however, any person who gives advance notice of
15 any inspection to be conducted under this Act shall be fined
16 not more than \$1,000 or imprisoned not more than one
17 year, or both.

18 VARIATIONS, TOLERANCES, AND EXEMPTIONS

19 SEC. 16. The Secretary may provide such reasonable
20 limitations and may make such rules and regulations allow-
21 ing reasonable variations, tolerances, and exemptions to and
22 from any or all provisions of this Act as he may find neces-
23 sary and proper to avoid serious impairment of the national
24 defense. Such action shall not be in effect for more than

1 six months without notification to affected employees and
2 an opportunity being afforded for a hearing.

3 **STATE JURISDICTION AND STATE PLANS**

4 **SEC. 17. (a)** Nothing in this Act shall prevent any
5 State agency or court from asserting jurisdiction under State
6 law over any occupational safety or health issue with respect
7 to which no standard is in effect under section 6 or 7.

8 (b) Any State which, at any time, desires to assume
9 responsibility for development and enforcement therein
10 of occupational safety and health standards relating to any
11 occupational safety or health issue with respect to which
12 a Federal standard has been promulgated under section 7
13 shall submit a State plan for the development of such stand-
14 ards and their enforcement.

15 (c) The Secretary shall approve the plan submitted by
16 a State under subsection (b), or any modification thereof,
17 if such plan in his judgment—

18 (1) designates a State agency or agencies as the
19 agency or agencies responsible for administering the plan
20 throughout the State,

21 (2) provides for the development and enforcement
22 of safety and health standards relating to one or more
23 safety or health issues, which standards (and the enforce-
24 ment of which standards) are or will be at least as
25 effective in providing safe and healthful employment and

1 places of employment as the standards promulgated un-
2 der section 7 which relate to the same issues,

3 (3) provides for a right of entry and inspection of
4 all workplaces subject to the Act which is at least as
5 effective as that provided in section 9 (a) (1), and in-
6 cludes a prohibition on advance notice of inspections,

7 (4) contains satisfactory assurances that such
8 agency or agencies have or will have the legal authority
9 and qualified personnel necessary for the enforcement of
10 such standards,

11 (5) gives satisfactory assurances that such State will
12 devote adequate funds to the administration and enforce-
13 ment of such standards,

14 (6) makes all standards included under the plan ap-
15 plicable to all employees of public agencies of the State
16 and its political subdivisions,

17 (7) requires employers in the State to make reports
18 to the Secretary in the same manner and to the same ex-
19 tent as if the plan were not in effect, and

20 (8) provides that the State agency will make such
21 reports to the Secretary in such form and containing
22 such information, as the Secretary shall from time to time
23 require.

24 (d) If the Secretary rejects a plan submitted under

1 subsection (b), he shall afford the State submitting the plan,
2 due notice and opportunity for a hearing before so doing.

3 (e) After the Secretary approves a State plan submitted
4 under subsection (b), he may, but shall not be required to,
5 exercise his authority under sections 9, 10, 11, and 15 with
6 respect to comparable standards promulgated under section
7 7, for the period specified in the next sentence. The Secre-
8 tary may exercise the authority referred to above until he
9 determines, on the basis of actual operations under the State
10 plan, that the criteria set forth in subsection (c) are being
11 applied, but he shall not make such determination for at least
12 three years after the plan's approval under subsection (c).
13 Upon making the determination referred to in the preceding
14 sentence, the provisions of sections 5(2), 9 (except for
15 purpose of carrying out subsection (d)), 10, 11, and 15
16 and standards promulgated under section 7 of this Act, shall
17 not apply with respect to any occupational safety or health
18 issues covered under the plan, but the Secretary may retain
19 jurisdiction under the above provisions in any proceeding
20 commenced under section 10 or 11 before the date of
21 determination.

22 (f) The Secretary shall, on the basis of reports sub-
23 mitted by the State agency and his own inspections make a
24 continuing evaluation of the manner in which each State
25 having a plan approved under this section is carrying out

1 such plan. Whenever the Secretary finds, after affording
2 due notice and opportunity for a hearing, that in the adminis-
3 tration of the State plan there is a failure to comply sub-
4 stantially with any provision of the State plan (or any assur-
5 ance contained therein), he shall notify the State agency of
6 his withdrawal of approval of such plan and upon receipt
7 of such notice such plan shall cease to be in effect, but the
8 State may retain jurisdiction in any case commenced before
9 the withdrawal of the plan in order to enforce standards under
10 the plan whenever the issues involved do not relate to the
11 reasons for the withdrawal of the plan.

12 (g) The State may obtain a review of a decision of the
13 Secretary withdrawing approval of or rejecting its plan by
14 the United States court of appeals for the circuit in which
15 the State is located by filing in such court within thirty days
16 following receipt of notice of such decision a petition praying
17 that the action of the Secretary be modified or set aside in
18 whole or in part. A copy of such petition shall forthwith be
19 served upon the Secretary, and thereupon the Secretary
20 shall certify and file in the court the record upon which the
21 decision complained of was issued as provided in section
22 2112 of title 28, United States Code. Unless the court finds
23 that the Secretary's decision in rejecting a proposed State
24 plan or withdrawing his approval of such a plan to be arbi-

1 trary and capricious, the court shall affirm the Secretary's
2 decision. The judgment of the court shall be subject to re-
3 view by the Supreme Court of the United States upon cer-
4 tiorari or certification as provided in section 1254 of title
5 28, United States Code.

6 **FEDERAL AGENCY SAFETY PROGRAMS AND**

7 **RESPONSIBILITIES**

8 **SEC. 18. (a)** It shall be the responsibility of the head
9 of each Federal agency to establish and maintain an effective
10 and comprehensive occupational safety and health program
11 which is consistent with the standards promulgated under sec-
12 tion 7. The head of each agency shall (after consultation
13 with representatives of the employees thereof) —

14 (1) provide safe and healthful places and conditions
15 of employment, consistent with the standards set under
16 section 7;

17 (2) acquire, maintain, and require the use of safety
18 equipment, personal protective equipment, and devices
19 reasonably necessary to protect employees;

20 (3) keep adequate records of all occupational acci-
21 dents and illnesses for proper evaluation and necessary
22 corrective action; and

23 (4) make an annual report to the Secretary with re-
24 spect to occupational accidents and injuries and the
25 agency's program under this section. Such report shall

1 include any report submitted under section 7902 (e) (2)
2 of title 5, United States Code.

3 (b) The Secretary shall report to the President a sum-
4 mary or digest of reports submitted to him under subsection
5 (a) (4) of this section, together with his evaluations of and
6 recommendations derived from such reports. The President
7 shall transmit annually to the Senate and House of Repre-
8 sentatives a report of the activities of Federal agencies under
9 this section.

10 (c) Section 7902 (c) (1) of title 5, United States Code
11 is amended by inserting after "agencies" the following: "and
12 of labor organizations representing employees".

13 RESEARCH AND RELATED ACTIVITIES

14 SEC. 19. (a) (1) The Secretary of Health, Education,
15 and Welfare, after consultation with the Secretary and with
16 other appropriate Federal departments or agencies, shall con-
17 duct (directly or by grants or contracts) research, experi-
18 ments, and demonstrations relating to occupational safety
19 and health, including studies of psychological factors involved,
20 and relating to innovative methods, techniques, and ap-
21 proaches for dealing with occupational safety and health
22 problems.

23 (2) The Secretary of Health, Education, and Welfare
24 shall from time to time consult with the Secretary in order
25 to develop specific plans for such research, demonstrations,

1 and experiments as are necessary to produce criteria enabling
2 the Secretary to meet his responsibility for the formulation of
3 safety and health standards under this Act; and the Secretary
4 of Health, Education, and Welfare, on the basis of such re-
5 search, demonstrations, and experiments and any other in-
6 formation available to him, shall develop and publish at
7 least annually such criteria which if applied will assure that
8 no employee will suffer diminished health or life expectancy
9 as a result of his work experience.

10 (3) The Secretary of Health, Education, and Welfare
11 shall also conduct special research, experiments, and demon-
12 strations relating to occupational safety and health as are
13 necessary to explore new problems, including those created
14 by new technology in occupational safety and health, which
15 may require ameliorative action beyond that which is other-
16 wise provided for in the operating provisions of this Act.
17 The Secretary of Health, Education, and Welfare shall also
18 conduct research into the motivational and behavioral factors
19 relating to the field of occupational safety and health.

20 (4) The Secretary, in conjunction with the Secretary of
21 Health, Education, and Welfare, shall as soon as practicable
22 develop procedures to assure that all exposure to ambient
23 dangers to health or safety is accurately measured and
24 recorded by employers with results and means of measure-
25 ment promptly made available to employees at intervals

1 frequent enough to assure that no employee unknowingly
2 suffers exposure in excess of levels which could constitute a
3 **danger to his safety or health.**

4 (5) The Secretary of Health, Education, and Welfare
5 shall publish within six months of enactment of this Act
6 and thereafter as needed but at least annually a list of all
7 known or potentially toxic substances and the concentrations
8 at which such toxicity is known to occur; and shall deter-
9 mine following a request by any employer or authorized
10 representative of any group of employees whether any sub-
11 stance normally found in the working place has potentially
12 toxic or harmful effects in such concentration as used or
13 found; and shall submit such determination both to em-
14 ployers and affected employees as soon as possible. Within
15 sixty days of such determination by the Secretary of Health,
16 Education, and Welfare of potential toxicity of any substance,
17 an employer shall not require any employee to be exposed
18 to such substance designated above in toxic or greater con-
19 centrations unless it is accompanied by information, made
20 available to employees, by label or other appropriate means,
21 of the known hazards or toxic or long-term ill effects, the
22 nature of the substance, and the signs, symptoms, emer-
23 gency treatment, and proper conditions and precautions of
24 safe use, and personal protective equipment is supplied

1 which allows established work procedures to be performed
2 with such equipment, or unless such exposed employee may
3 absent himself from such risk of harm for the period nec-
4 essary to avoid such danger without loss of regular com-
5 pensation for such period.

6 (b) The Secretary of Health, Education, and Welfare is
7 authorized to make inspections and question employers and
8 employees as provided in section 9 of this Act in order to
9 carry out his functions and responsibilities under this section.

10 (c) The Secretary is authorized to enter into contracts,
11 agreements, or other arrangements with appropriate public
12 agencies or private organizations for the purpose of conduct-
13 ing studies related to the establishing and applying of occu-
14 pational safety and health standards under section 7 of this
15 Act. In carrying out his responsibilities under this subsection,
16 the Secretary and the Secretary of Health, Education, and
17 Welfare shall cooperate in order to avoid any duplication of
18 efforts under this section.

19 (d) The Secretary, after consultation with the Secretary
20 of Health, Education, and Welfare, and with the appropriate
21 official in each State as duly designated by such State, shall
22 establish such accident and health reporting systems for em-
23 ployers and for the States as he deems necessary to carry out
24 his responsibilities under this Act.

25 (e) Information obtained by the Secretary and the

1 Secretary of Health, Education, and Welfare under this sec-
2 tion shall be disseminated by the Secretary to employers and
3 employees and organizations thereof.

4 TRAINING AND EMPLOYEE EDUCATION

5 SEC. 20. (a) The Secretary of Health, Education, and
6 Welfare, after consultation with the Secretary of Labor and
7 with other appropriate Federal departments and agencies,
8 shall conduct, directly or by grants or contracts (1) educa-
9 tion programs to provide an adequate supply of qualified
10 personnel to carry out the purposes of this Act, and (2) in-
11 formational programs on the importance of and proper use
12 of adequate safety and health equipment.

13 (b) The Secretary is also authorized to conduct (di-
14 rectly or by grants or contracts) short-term training of
15 personnel engaged in work related to his responsibilities under
16 this Act.

17 (c) The Secretary, in consultation with the Secretary
18 of Health, Education, and Welfare, shall provide for the
19 establishment and supervision of programs for the education
20 and training of employers and employees in the recognition,
21 avoidance, and prevention of unsafe or unhealthful working
22 conditions in employments covered by this Act, and to con-
23 sult with and advise employers and employees, and organiza-
24 tions representing employers and employees as to effective
25 means of preventing occupational injuries and illnesses.

GRANTS TO THE STATES

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SEC. 21. (a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 17 (c) to assist them (1) in identifying their needs and responsibilities in the area of occupational safety and health, (2) in developing State plans under section 17, or (3) in developing plans for—

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appro-

1 priate State agency, or agencies, for receipt of any grant
2 made by the Secretary under this section.

3 (d) Any State agency, or agencies, designated by the
4 Governor of the State, desiring a grant under this section shall
5 submit an application therefor to the Secretary.

6 (e) The Secretary shall review the application, and
7 shall, after consultation with the Secretary of Health, Edu-
8 cation, and Welfare, approve or reject such application.

9 (f) The Federal share for each State grant under sub-
10 section (a) or (b) of this section may be up to 90 per
11 centum of the State's total cost. In the event the Federal
12 share for all States under either such subsection is not the
13 same, the differences among the States shall be established
14 on the basis of objective criteria.

15 (g) The Secretary is authorized to make grants to the
16 States to assist them in administering and enforcing pro-
17 grams for occupational safety and health contained in State
18 plans approved by the Secretary pursuant to section 17 of
19 this Act. The Federal share for each State grant under this
20 subsection may be up to 50 per centum of the State's total
21 cost. The last sentence of subsection (f) shall be applicable
22 in determining the Federal share under this subsection.

23 (h) Prior to June 30, 1973, the Secretary shall, after
24 consultation with the Secretary of Health, Education, and

1 Welfare, transmit a report to the President and to Congress,
2 describing the experience under the program and making any
3 recommendations he may deem appropriate.

4 EFFECT ON OTHER LAWS

5 SEC. 22. Nothing in this Act shall be construed or held
6 to supersede or in any manner affect any workmen's com-
7 pensation law or to enlarge or diminish or affect in any other
8 manner the common law or statutory rights, duties, or liabili-
9 ties of employers and employees under any law with respect
10 to injuries, occupational or other diseases, or death of em-
11 ployees arising out of, or in the course of, employment.

12 AUDITS

13 SEC. 23. (a) Each recipient of a grant under this Act
14 shall keep such records as the Secretary shall prescribe, in-
15 cluding records which fully disclose the amount and disposi-
16 tion by such recipient of the proceeds of such grant, the total
17 cost of the project or undertaking in connection with which
18 such grant is made or used, and the amount of that portion
19 of the cost of the project or undertaking supplied by other
20 sources, and such other records as will facilitate an effective
21 audit.

22 (b) The Secretary and the Comptroller General of the
23 United States, or any of their duly authorized representa-

1 tives, shall have access for the purpose of audit and examina-
2 tion to any books, documents, papers, and records of the re-
3 cipients of any grant under this Act that are pertinent to
4 any such grant.

5 REPORTS

6 SEC. 24. Within one hundred and twenty days follow-
7 ing the convening of each regular session of each Congress,
8 the Secretary and the Secretary of Health, Education, and
9 Welfare shall each prepare and submit to the President for
10 transmittal to the Congress a report upon the subject
11 matter of this Act, the progress concerning the achieve-
12 ment of its purposes, the needs and requirements in the field
13 of occupational safety and health, and any other relevant
14 information, and including any recommendations to effectuate
15 the purposes of this Act.

16 APPROPRIATIONS

17 SEC. 25. There are authorized to be appropriated to
18 carry out this Act for each fiscal year such sums as the Con-
19 gress shall deem necessary.

20 EFFECTIVE DATE

21 SEC. 26. This Act shall take effect on the first day of the
22 first month which begins more than thirty days after the date
23 of its enactment.

1 **SEPARABILITY**

2 SEC. 27. If any provision of this Act, or the application
3 of such provision to any person or circumstance, shall be held
4 invalid, the remainder of this Act, or the application of such
5 provision to persons or circumstances other than those as
6 to which it is held invalid, shall not be affected thereby.

91ST CONGRESS
2D SESSION

H. R. 19200

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 1970

Mr. STEIGER of Wisconsin (for himself and Mr. SIKES) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To assure safe and healthful working conditions for working men and women; by providing the means and procedures for establishing and enforcing mandatory safety and health standards; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Occupational Safety and
4 Health Act".

I

1 CONGRESSIONAL FINDINGS AND PURPOSE

2 SEC. 2. (a) The Congress finds that personal injuries
3 and illnesses arising out of work situations impose a substan-
4 tial burden upon, and are a hindrance to, interstate commerce
5 in terms of lost production, wage loss, medical expenses, and
6 disability compensation payments.

7 (b) The Congress declares it to be its purpose and
8 policy, through the exercise of its powers, to regulate com-
9 merce among the several States and with foreign nations and
10 to provide for the general welfare, to assure so far as
11 possible every working man and woman in the Nation safe
12 and healthful working conditions and to preserve our human
13 resources—

14 (1) by encouraging employers and employees in
15 their efforts to reduce the number of occupational safety
16 and health hazards at their places of employment, and
17 to stimulate employers and employees to institute new
18 and to perfect existing programs for providing safe and
19 healthful working conditions;

20 (2) by providing that employers and employees
21 have separate but dependent responsibilities and rights
22 with respect to achieving safe and healthful working
23 conditions;

24 (3) by creating a National Occupational Safety
25 and Health Board to be appointed by the President for

1 the purpose of setting mandatory occupational safety
2 and health standards applicable to businesses affecting
3 interstate commerce, and by creating an Occupational
4 Safety and Health Appeals Commission for carrying out
5 adjudicatory functions under the Act;

6 (4) by building upon advances already made
7 through employer and employee initiative for providing
8 safe and healthful working conditions;

9 (5) by providing for research in the field of occu-
10 pational safety and health, including the psychological
11 factors involved, and by developing innovative methods,
12 techniques, and approaches for dealing with occupational
13 safety and health problems;

14 (6) by exploring ways to discover latent diseases,
15 establishing causal connections between diseases and
16 work in environmental conditions, and conducting other
17 research relating to health problems, in recognition of
18 the fact that occupational health standards present prob-
19 lems often different from those involved in occupational
20 safety;

21 (7) by providing medical criteria which will assure
22 insofar as practicable that no employee will suffer
23 diminished health, functional capacity, or life expectancy
24 as a result of his work experience;

25 (8) by providing for training programs to increase

1 the number and competence of personnel engaged in the
2 field of occupational safety and health;

3 (9) by providing for the development and promul-
4 gation of occupational safety and health standards;

5 (10) by providing an effective enforcement pro-
6 gram which shall include a prohibition against giving
7 advance notice of any inspection and sanctions for any
8 individual violating this prohibition;

9 (11) by encouraging the States to assume the fullest
10 responsibility for the administration and enforcement of
11 their occupational safety and health laws by providing
12 grants to the States to assist in identifying their needs and
13 responsibilities in the area of occupational safety and
14 health, to develop plans in accordance with the provisions
15 of this Act, to improve the administration and enforce-
16 ment of State occupational safety and health laws, and
17 to conduct experimental and demonstration projects in
18 connection therewith;

19 (12) by providing for appropriate reporting pro-
20 cedures with respect to occupational safety and health
21 which procedures will help achieve the objectives of this
22 Act and accurately describe the nature of the occupa-
23 tional safety and health problem;

24 (13) by encouraging joint labor-management efforts
25 to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "Safety and Health Appeals Commission" means the Occupational Safety and Health Appeals Commission established under section 12 of this Act.

(3) The term "Board" means the National Occupational Safety and Health Board established under section 8 of this Act.

(4) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than a State as defined in paragraph (8) of this subsection), or between points in the same State but through a point outside thereof.

(5) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(6) The term "employer" means a person engaged in a business affecting commerce who has employees,

1 but does not include the United States or any State or
2 political subdivision of a State.

3 (7) The term "employee" means an employee of
4 an employer who is employed in a business of his em-
5 ployer which affects commerce.

6 (8) The term "State" includes a State of the United
7 States, the District of Columbia, Puerto Rico, the Virgin
8 Islands, American Samoa, Guam, and the Trust Terri-
9 tory of the Pacific Islands.

10 (9) The term "occupational safety and health
11 standard" means a standard which requires conditions,
12 or the adoption or use of one or more practices, means,
13 methods, operations, or processes, reasonably necessary
14 or appropriate to provide safe or healthful employment
15 and places of employment.

16 (10) The term "national consensus standard" means
17 any occupational safety and health standard or modi-
18 fication thereof which (a) has been adopted and promul-
19 gated by a nationally recognized public or private
20 standards-producing organization possessing technical
21 competence and under a consensus method which in-
22 volves consideration of the views of interested and af-
23 fected parties and (b) has been designated by the Board,
24 after consultation with other appropriate Federal
25 agencies.

1 (11) The term "established Federal standard"
2 means any operative occupational safety and health
3 standard established by any agency of the United States
4 and presently in effect, or contained in any Act of Con-
5 gress in force on the date of enactment of this Act.

6 APPLICABILITY OF ACT

7 SEC. 4. This Act shall apply only with respect to
8 employment performed in a workplace in a State, Wake
9 Island, Outer Continental Shelf lands defined in the Outer
10 Continental Shelf Lands Act, Johnston Island, or the Canal
11 Zone, except that this Act shall not apply to any vessel
12 underway on the Outer Continental Shelf lands. The Secre-
13 tary of the Interior shall, by regulation, provide for judicial
14 enforcement of this Act by the courts established for areas
15 in which there are no Federal district courts having juris-
16 diction.

17 DUTIES OF EMPLOYERS

18 SEC. 5. Each employer—

19 (a) shall furnish to each of his employees employ-
20 ment and a place of employment which are free from
21 any hazards which are readily apparent and are causing
22 or are likely to cause death or serious physical harm to
23 his employees;

24 (b) shall comply with occupational safety and
25 health standards promulgated under this Act.

1 OCCUPATIONAL SAFETY AND HEALTH STANDARDS

2 SEC. 6. (a) The National Occupational Safety and
3 Health Board established under section 8 of this Act is au-
4 thorized to promulgate rules prescribing occupational safety
5 and health standards in accordance with sections 556 and
6 557 of title 5, United States Code.

7 (b) Without regard to the provisions of sections 553,
8 556, and 557, title 5, United States Code, the Board shall,
9 as soon as practicable, but in no event later than three years
10 after the date of enactment of this Act, by rule promulgate
11 as an occupational safety and health standard, any national
12 consensus standard or any established Federal standard, un-
13 less it determines that the promulgation of such a standard
14 as an occupational safety and health standard would not
15 result in improved safety or health for affected employees.
16 In the event of conflict among such standards, the Board
17 shall promulgate the standard which assures the greatest pro-
18 tection of the safety or health of the affected employees.
19 Such national consensus standard or established Federal
20 standard shall take effect immediately upon publication and
21 remain in effect until superseded by a rule promulgated
22 pursuant to subsection (a) of this section.

23 (c) (1) Whenever the Board promulgates any stand-
24 ard, makes any rule, order, decision, grants any exemption
25 or extension of time, it shall include a statement of the

1 reasons for such action, and such statement shall be pub-
2 lished in the Federal Register; and

3 (2) Whenever a rule issued by the Board differs sub-
4 stantially from an existing national consensus standard, the
5 Board shall include in the rule issued a statement of the
6 reasons why the rule as adopted will better effectuate the
7 purposes of this Act than the national consensus standard.

8 (d) Any agency may participate in the rulemaking
9 under this section.

10 (e) The Secretary of Labor (with respect to safety
11 issues) or the Secretary of Health, Education, and Welfare
12 (with respect to health issues) may submit a request to the
13 Board at any time to establish or modify occupational safety
14 and health standards indicated in the request. Within sixty
15 days from the receipt of the request, the Board shall com-
16 mence proceedings under this section.

17 (f) Any interested person may also submit a request
18 in writing to the Board at any time to establish or modify
19 occupational safety and health standards. The Board shall
20 give due consideration to such request and may commence
21 proceedings under this section on the basis of such request.

22 (g) If, prior to the publication of the rule, an interested
23 person or agency which submitted written data, views, or
24 arguments makes application to the Board for leave to adduce

1 additional data, views, or arguments and such person or
2 agency shows to the satisfaction of the Board that additions
3 may materially affect the result of the rulemaking procedure
4 and that there were reasonable grounds for failure to adduce
5 such additions earlier, the Board may receive and consider
6 such additions.

7 (h) In determining the priority for establishing stand-
8 ards under this section, the Board shall give due regard to
9 the need for mandatory safety and health standards for par-
10 ticular industries, trades, crafts, occupations, businesses,
11 workplaces or work environments. The Board shall also
12 give due regard to the recommendations of the Secretary
13 and the Secretary of Health, Education, and Welfare regard-
14 ing the need for mandatory standards in determining the
15 priority for establishing such standards.

16 (i) (1) The Board shall provide without regard to
17 requirements of Ch. 5, title 5, United States Code, for an
18 emergency temporary standard to take immediate effect
19 upon publication in the Federal Register if it determines (A)
20 that employees are exposed to grave danger from exposure
21 to substances determined to be toxic or from new hazards
22 resulting from the introduction of new processes, and (B)
23 that such emergency standard is necessary to protect em-
24 ployees from such danger.

25 (2) Such standard shall be effective until superseded

1 by a standard promulgated in accordance with the procedures
2 prescribed in paragraph (3) of this subsection.

3 (3) Upon publication of such standard in the Federal
4 Register the Board shall commence a hearing in accordance
5 with sections 556 and 557 of title 5, United States Code,
6 and the standard as published shall also serve as a proposed
7 rule for the hearing. The Board shall promulgate a standard
8 under this paragraph no later than six months after publica-
9 tion of the emergency temporary standard as provided in
10 paragraph (2) of this subsection.

11 (j) (1) Whenever the Board upon the basis of informa-
12 tion submitted to it in writing by an interested person (in-
13 cluding a representative of an organization of employers or
14 employees, or a nationally recognized standards-producing
15 organization) or by the Secretary or the Secretary of Health,
16 Education, and Welfare, a State or a political subdivision of
17 a State, or on the basis of information otherwise available
18 to it, determines that a rule should be prescribed under sub-
19 section (a) of this section, the Board may appoint an ad-
20 visory committee as provided for in section 7(e) of this
21 Act, which shall submit recommendations to the Board re-
22 garding the rule to be prescribed which will carry out the
23 purposes of this Act, which recommendations shall be pub-
24 lished by the Board in the Federal Register, either as part
25 of a subsequent notice of proposed rulemaking or separately.

1 The recommendations of an advisory committee shall be
2 submitted to the Board within two hundred and seventy
3 days from its appointment, or within such longer or shorter
4 period as may be prescribed by the Board, but in no event
5 may the Board prescribe a period which is longer than one
6 **year and three months.**

7 (2) After the submission of such recommendations, the
8 Board shall, as soon as practicable and in any event within
9 four months, schedule and give notice of a hearing on the
10 recommendations of the advisory committee and any other
11 relevant subjects and issues. In the event that the advisory
12 committee fails to submit recommendations within two hun-
13 dred and seventy days from its appointment (or such longer
14 or shorter period as the Board has prescribed) the Board
15 shall make a proposal relevant to the purpose for which the
16 advisory committee was appointed, and shall within four
17 months schedule and give notice of hearing thereon. In
18 either case, notice of the time, place, subjects, and issues
19 of any such hearing shall be published in the Federal Regis-
20 ter thirty days prior to the hearing and shall contain the
21 recommendations of the advisory committee or the proposal
22 made in absence of such recommendation. Prior to the hear-
23 ing interested persons shall be afforded an opportunity to
24 submit comments upon any recommendations of the ad-
25 visory committee or other proposal. Only persons who have

1 submitted such comments shall have a right at such hearing
2 to submit oral arguments, but nothing herein shall be deemed
3 to prevent any person from submitting written evidence,
4 data, views, or arguments.

5 (k) The Board shall within sixty days (where an ad-
6 visory committee is utilized) or one hundred and twenty
7 days (where no advisory committee is utilized) after com-
8 pletion of the hearing held pursuant to section 6(a) issue
9 a rule promulgating, modifying, or revoking an occupational
10 safety and health standard or make a determination that a
11 rule should not be issued. Such a rule may contain a provi-
12 sion delaying its effective date for such period (not in excess
13 of ninety days) as the Board determines may be appropriate
14 to insure that affected employers are given an opportunity
15 to familiarize themselves and their employees with the re-
16 quirements of the standard.

17 (1) Any affected employer may apply to the Board for
18 a rule or order for an exemption from the requirements of
19 section 5(b) of this Act. Affected employees shall be given
20 notice by the employer of each such application and an op-
21 portunity to participate in a hearing. The Board shall issue
22 such rule or order if it determines on the record, after an
23 opportunity for an inspection and a hearing, that the pro-
24 ponent of the exemption has demonstrated by a preponder-
25 ance of the evidence that the conditions, practices, means,

1 methods, operations, or processes used or proposed to be
2 used by an employer will provide employment and places
3 of employment to his employees which are as safe and
4 healthful as those which would prevail if he complied with
5 the standard. The rule or order so issued shall prescribe the
6 conditions the employer must maintain, and the practices,
7 means, methods, operations, and processes which he must
8 adopt and utilize to the extent they differ from the standard
9 in question. Such a rule or order may be modified or revoked
10 upon application by an employer, employees, or by the
11 Board on its own motion in the manner prescribed for its
12 issuance at any time after six months after its issuance.

13 (m) Standards promulgated under this section shall
14 prescribe the posting of such labels or warnings as are neces-
15 sary to apprise employees of the nature and extent of hazards
16 and of the suggested methods of avoiding or ameliorating
17 them.

18 ADVISORY COMMITTEES

19 Sec. 7. (a) There is hereby established a National
20 Advisory Committee on Occupational Safety and Health
21 (hereafter in this section referred to as the "Committee")
22 consisting of twelve members appointed by the Secretary,
23 four of whom are to be designated by the Secretary of
24 Health, Education, and Welfare, without regard to the
25 civil service laws and composed equally of representatives

1 of management, labor and the public. The Secretary shall
2 designate one of the public members as Chairman. The
3 members shall be selected upon the basis of their experience
4 and competence in the field of occupational safety and
5 health.

6 (b) The Committee shall advise, consult with, and make
7 recommendations to the Secretary and the Secretary of
8 Health, Education, and Welfare on matters relating to the
9 administration of the Act. The Committee shall hold no
10 fewer than two meetings during each calendar year. All
11 meetings of the Committee shall be open to the public and
12 a transcript shall be kept and made available for public
13 inspection.

14 (c) The members of the Committee shall be compen-
15 sated in accordance with the provisions of subsection 8 (g)
16 of this Act.

17 (d) The Secretary shall furnish to the Committee an
18 executive secretary and such secretarial, clerical, and other
19 services as are deemed necessary to the conduct of its
20 business.

21 (e) An advisory committee which may be utilized by
22 the Board in its standard-setting functions under section 6
23 of this Act shall consist of not more than fifteen members
24 and shall include as a member one or more designees of the
25 Secretary of Health, Education, and Welfare, and also as a

1 member one or more designees of the Secretary of Labor
2 and shall include among its members an equal number of
3 persons qualified by experience and affiliation to present the
4 viewpoint of the employers involved, and of persons simi-
5 larly qualified to present the viewpoint of the workers in-
6 volved, as well as one or more representatives of health and
7 safety agencies of the States. An advisory committee may
8 also include such other persons as the Board may appoint
9 who are qualified by knowledge and experience to make a
10 useful contribution to the work of such committee, including
11 one or more representatives of professional organizations of
12 technicians or professionals specializing in occupational safety
13 or health, and one or more representatives of nationally rec-
14 ognized standards-producing organizations, but the number
15 of persons so appointed to any advisory committee shall not
16 exceed the number appointed to such committee as repre-
17 sentatives of Federal and State agencies. Persons appointed
18 to advisory committees from private life shall be compen-
19 sated in the same manner as consultants or experts under
20 section 8 (g) of this Act. The Board shall pay to any State
21 which is the employer of a member of such committee who
22 is a representative of the health or safety agency of that
23 State, reimbursement sufficient to cover the actual cost to the
24 State resulting from such representative's membership on
25 such committee. Any meeting of such committee shall be

1 open to the public and an accurate record shall be kept and
2 made available to the public. No member of such committee
3 (other than representatives of employers and employees)
4 shall have an economic interest in any proposed rule.

5 NATIONAL OCCUPATIONAL SAFETY AND HEALTH BOARD

6 SEC. 8. (a) The National Occupational Safety and
7 Health Board is hereby established. The Board shall be com-
8 posed of five members, having a background either by reason
9 of previous training, education, or experience in the field of
10 occupational safety or health, who shall be appointed by the
11 President, by and with the consent of the Senate, and shall
12 serve at the pleasure of the President. One of the five mem-
13 bers may be designated at any time by the President to serve
14 as Chairman of the Board.

15 (b) Subchapter II (relating to Executive Schedule pay
16 rates) of chapter 53 of title V of the United States Code is
17 amended as follows:

18 (1) Section 5314 (5 U.S.C. 5314) is amended by add-
19 ing at the end thereof the following: "(54) Chairman, Na-
20 tional Occupational Safety and Health Board."

21 (2) Section 5315 (5 U.S.C. 5315) is amended by add-
22 ing at the end thereof the following: "(92) Members, Na-
23 tional Occupational Safety and Health Board."

24 (c) The principal office of the Board shall be in the

1 District of Columbia. The Board shall have an official seal
2 which shall be judicially noticed and which shall be preserved
3 **in the custody of the Secretary of the Board.**

4 (d) The Chairman of the Board shall, without regard
5 to the civil service laws, appoint and prescribe the duties of
6 **a Secretary of the Board.**

7 (e) The Chairman shall be responsible on behalf of the
8 Board for the administrative operations of the Board, and
9 shall appoint, in accordance with the civil service laws, such
10 officers, hearing examiners, agents, attorneys, and employees
11 as are deemed necessary and to fix their compensation in
12 accordance with the Classification Act of 1949, as amended.

13 (f) Three members of the Board shall constitute a
14 **quorum.**

15 (g) The Board is authorized to employ experts, ad-
16 visers, and consultants or organizations thereof as author-
17 ized by section 3109 of title 5, United States Code, and
18 allow them while away from their homes or regular places
19 of business, travel expenses (including per diem in lieu of
20 subsistence) as authorized by section 5703 (b) of title 5,
21 United States Code, for persons in the Government service
22 **employed intermittently, while so employed.**

23 (h) To carry out its functions under this Act, the Board
24 is authorized to issue subpoenas for the attendance and testi-
25 mony of witnesses and the production of relevant papers.

1 books, and documents and administer oaths. Witnesses sum-
2 moned before the Board shall be paid the same fees and mile-
3 age that are paid witnesses in the courts of the United States.

4 (i) The Board may order testimony to be taken by
5 deposition in any proceeding pending before it at any
6 stage of such proceeding. Reasonable notice must first be
7 given in writing by the Board or by the party or his at-
8 torney of record, which notice shall state the name of the
9 witness and the time and place of the taking of his deposi-
10 tion. Any person may be compelled to appear and depose,
11 and to produce books, papers, or documents, in the same
12 manner as witnesses may be compelled to appear and testify
13 and produce like documentary evidence before the Board,
14 as provided in subsection (j) of this section. Witnesses
15 whose depositions are taken under this subsection, and
16 the persons taking such depositions, shall be entitled to the
17 same fees as are paid for like services in the courts of the
18 United States.

19 (j) In the case of contumacy by, or refusal to obey
20 a subpoena served upon any person under this section, the
21 Federal district court for any district in which such per-
22 son is found or resides or transacts business, upon applica-
23 tion by the United States, and after notice to such person
24 and hearing, shall have jurisdiction to issue an order re-
25 quiring such person to appear and produce documents be-

1 fore the Board, or both; and any failure to obey such order
2 of the court may be punished by such court as a contempt
3 thereof.

4 (k) The Board is authorized to make such rules as are
5 necessary for the orderly transaction of its proceedings.

6 DUTIES OF THE SECRETARY

7 Inspections, Investigations, and Reports

8 SEC. 9. (a) In order to carry out the purposes of this
9 Act, the Secretary, upon presenting appropriate credentials
10 to the owner, operator, or agent in charge, is authorized—

11 (1) to enter without delay and at reasonable times
12 any factory, plant, establishment, construction site, or
13 other area, workplace or environment where work is
14 performed by an employee of an employer; and

15 (2) to question any such employee and to inspect
16 and investigate during regular working hours and at
17 other reasonable times and within reasonable limits
18 and in a reasonable manner, any such area, workplace,
19 or environment, and all pertinent conditions, structures,
20 machines, apparatus, devices, equipment, and materials
21 therein.

22 (b) If the employer, or his representative, accompanies
23 the Secretary or his designated representative during the con-
24 duct of all or any part of an inspection, a representative au-

1 thorized by the employees shall also be given an opportunity
2 to do so.

3 (c) Each employer shall make, keep, and preserve for
4 such period of time, and make available to the Secretary
5 such record of his activities concerning the requirements
6 of this Act as the Secretary may prescribe by regulation or
7 order as necessary or appropriate for carrying out his duties
8 under this Act.

9 (d) In making his inspections and investigations under
10 this Act the Secretary may require the attendance and testi-
11 mony of witnesses and the production of evidence under
12 oath. Witnesses shall be paid the same fees and mileage that
13 are paid witnesses in the courts of the United States. In case
14 of contumacy, failure, or refusal of any person to obey such
15 an order, any district court of the United States or the
16 United States courts of any territory or possession, within
17 the jurisdiction of which such person is found, or resides or
18 transacts business, upon the application by the Secretary,
19 shall have jurisdiction to issue to such person an order
20 requiring such person to appear to produce evidence if, as,
21 and when so ordered, and to give testimony relating to the
22 matter under investigation or in question; and any failure to
23 obey such order of the court may be punished by said court
24 as a contempt thereof.

1 (c) In carrying out his responsibilities under this Act,
2 the Secretary is authorized to—

3 (1) use, with the consent of any Federal agency,
4 the services, facilities, and employees of such agency
5 with or without reimbursement, and with the consent of
6 any State or political subdivision thereof, accept and
7 use the services, facilities, and employees of the agencies
8 of such State or subdivision with or without reimburse-
9 ment; and

10 (2) employ experts and consultants or organiza-
11 tions thereof as authorized by section 3109 of title 5,
12 United States Code, except that contracts for such em-
13 ployment may be renewed annually; compensate individ-
14 uals so employed at rates not in excess of the rate spec-
15 ified at the time of service for grade GS-18 in section
16 5332 of title 5, United States Code, including travel-
17 time, and allow them while away from their homes or
18 regular places of business, travel expenses (including per
19 diem in lieu of subsistence) as authorized by section
20 5703 of title 5, United States Code, for persons in the
21 Government service employed intermittently, while so
22 employed.

23 (3) delegate his authority under subsection (a) of
24 this section to any agency of the Federal Government
25 with, or without reimbursement and with its consent and

1 to any State agency or agencies designated by the Gov-
2 ernor of the State and with or without reimbursement
3 and under conditions agreed upon by the Secretary and
4 such State agency or agencies.

5 (f) Any information obtained by the Secretary, the
6 Secretary of Health, Education, and Welfare, or a State
7 agency under this Act shall be obtained with a minimum
8 burden upon employers, especially those operating small bus-
9 inesses. Unnecessary duplication of efforts in obtaining infor-
10 mation shall be reduced to the maximum extent feasible.

11 (g) The Secretary shall prescribe such rules and regu-
12 lations as he may deem necessary to carry out his responsi-
13 bilities under this Act, including rules and regulations dealing
14 with the inspection of an employer's establishment.

15 (h) There are hereby authorized to be appropriated such
16 sums as the Congress shall deem necessary to enable the
17 Secretary to purchase equipment which he determines as nec-
18 essary to measure the exposure of employees to working
19 environments which might cause cumulative or latent ill
20 effects.

21 CITATIONS AND SAFETY AND HEALTH APPEALS COMMIS-

22 SION HEARINGS

23 SEC. 10. (a) If, upon the basis of an inspection or in-
24 vestigation, the Secretary believes that an employer has
25 violated the requirements of section 5, 6, or 9 (c) of this Act,

1 or subsection (e) of this section, or regulations prescribed
2 pursuant to this Act, he shall issue a citation to the em-
3 ployer unless the violation is de minimis. The citation shall
4 be in writing and describe with particularity the nature of the
5 violation, including a reference to the requirement, standard,
6 rule, order, or regulation alleged to have been violated.

7 (b) In addition, the citation shall include—

8 (1) the amount of any proposed civil penalties; and

9 (2) a reasonable time within which the employer
10 shall correct the violation.

11 (c) The Secretary shall issue each citation within forty-
12 five days from the concurrence of the alleged violation but
13 for good cause the Secretary may extend such period up to
14 a maximum of ninety days from such occurrence.

15 (d) If an employer notifies the Secretary that he in-
16 tends to contest a citation issued under this section, the
17 Secretary shall notify the Safety and Health Appeals Com-
18 mission of the employer's intention and the Safety and Health
19 Appeals Commission shall afford the employer an oppor-
20 tunity for a hearing as provided in section 11 of this Act.
21 However, if the employer fails to notify the Secretary within
22 fifteen days after the receipt of the citation of his intention
23 to contest the citation issued by the Secretary, the citation
24 shall, on the day immediately following the expiration of

1 the fifteen-day period, become a final order of the Safety and
2 Health Appeals Commission.

3 (e) Each employer who receives a citation under this
4 section shall prominently post such citation or copy thereof
5 at or near each place a violation referred to in the citation
6 occurred.

7 (f) No citation may be issued under this section after
8 the expiration of three months following the occurrence of
9 any violation.

10 (g) Whenever the Secretary compromises, mitigates, or
11 settles any penalty assessed under this Act, he shall include
12 a statement of the reasons for such action, and such statement
13 shall be published in the Federal Register.

14 OCCUPATIONAL SAFETY AND HEALTH APPEALS

15 COMMISSION

16 SEC. 11. A. ORGANIZATION AND JURISDICTION—

17 (1) STATUS.—The Occupational Safety and Health
18 Appeals Commission is hereby established as an independent
19 agency in the Executive Branch of the Government. The
20 members thereof shall be known as the Chairman of the
21 Commission and the Commissioners of the Occupational
22 Safety and Health Appeals Commission.

23 (2) JURISDICTION.—The Commission shall have such
24 jurisdiction as is conferred on it by this Act.

1 (3) MEMBERSHIP.—(a) The Commission shall be
2 composed of three Commissioners, appointed by the Presi-
3 dent, by and with the advice and consent of the Senate, solely
4 on the grounds of fitness to perform the duties of the office.

5 (b) The salary of the Chairman of the Commission
6 shall be equal to that provided for the executive level in
7 section 5314, title 5, United States Code, and the salary of
8 the remaining two Commissioners shall be in accordance with
9 the executive level as provided in section 5315, title 5,
10 United States Code.

11 (c) The terms of office of the Commissioners shall be
12 as follows: one Commissioner shall be appointed for a term
13 of two years, one Commissioner shall be appointed for a
14 term of four years, and the remaining Commissioner for a
15 term of six years, respectively. Their successors shall be
16 appointed for terms of six years each, except that vacancy
17 caused by death, resignation, or removal of a member prior
18 to the expiration of the term for which he was appointed
19 shall be filled only for the remainder of such unexpired term.
20 A Commissioner may be removed by the President for
21 inefficiency, neglect of duty, or malfeasance in office.

22 (d) A Commissioner removed from office in accord-
23 ance with the provisions of this section shall not be per-
24 mitted at any time to practice before the Commission.

1 (4) ORGANIZATION.—(a) The Commission shall have
2 a seal which shall be judicially noticed.

3 (b) The President may at any time designate one of
4 the three Commissioners to serve as Chairman of the Com-
5 mission.

6 (c) A majority of the Commissioners shall constitute
7 a quorum for the transaction of the Commission's business. A
8 vacancy shall not impair its powers nor affect its duties.

9 (d) The principal office of the Commission shall be in
10 the District of Columbia, but it may sit at any place within
11 the United States giving due consideration to the expedi-
12 tious conduct of its proceedings and the convenience of the
13 parties.

14 (5) HEARING EXAMINERS.—(a) The Commission may
15 appoint hearing examiners to conduct such business as the
16 Commission may require. Each hearing examiner shall be an
17 attorney at law and shall be selected from the Civil Service
18 Commission list of individuals eligible for selection as admin-
19 istrative hearing examiners.

20 (b) Except as otherwise provided in this Act, the hear-
21 ing examiners shall be subject to the laws governing em-
22 ployees in the classified civil service, except that appoint-
23 ments shall be made without regard to 5 U.S.C. 5108. Each

1 hearing examiner shall receive compensation at a rate not
2 less than the GS-16 level.

3 **B. PROCEDURE—**

4 (1) **REPRESENTATION OF PARTIES.**—The Secretary or
5 his delegate shall be represented by the Solicitor of Labor
6 or his delegate before the Commission. The respondent shall
7 be represented in accordance with the rules of practice
8 prescribed by the Commission.

9 (2) **RULES OF PRACTICE, PROCEDURE, AND EVIDENCE.**—The proceedings of the Commission shall be con-
10 ducted in accordance with such rules of practice and pro-
11 cedure (other than rules of evidence) as the Commission
12 may prescribe and in accordance with the rules of evidence
13 applicable in trials without a jury in the United States Dis-
14 trict Court of the District of Columbia.

15 (3) **SERVICE OF PROCESS.**—The mailing by certified
16 mail or registered mail of any pleading, decision, order, notice
17 or process in respect of proceedings before the Commission
18 shall be held sufficient service of such pleading, decision,
19 order, notice, or process.

20 (4) **ADMINISTRATION OF OATHS AND PROCUREMENT**
21 **OF TESTIMONY.**—For the efficient administration of the func-
22 tions vested in the Commission any Commissioner of the
23 Commission, the clerk of the Commission, or any other
24 employee of the Commission designated in writing for the

1 purpose by the Chairman of the Commission, may administer
2 oaths, and any Commissioner may examine witnesses and
3 require, by subpoena ordered by the Commission and signed
4 by the Commissioner (or by the Secretary of the Commis-
5 sion or by any other employee of the Commission when
6 acting under authority from the Secretary of the Commis-
7 sion—

8 (a) The attendance and testimony of witnesses, and
9 the production of all necessary books, papers, documents,
10 correspondence, and other evidence, from any place in the
11 United States at any designated place of hearing, or

12 (b) The taking of a deposition before any designated
13 individual competent to administer oaths under this title. In
14 the case of a deposition the testimony shall be reduced to
15 writing by the individual taking the deposition or under
16 his direction and shall then be subscribed by the deponent.

17 (5) WITNESS FEES.—(a) Any witness summoned or
18 whose deposition is taken shall receive the same fees and
19 mileage as witnesses in courts of the United States.

20 (b) Such fees and mileage and the expenses of taking
21 any such deposition shall be paid as follows:

22 (A) In the case of witnesses for the Secretary or
23 his delegate, such payments shall be made by the Sec-
24 retary or his delegate out of any moneys appropriated

1 for the enforcement of this Act and may be made in
2 advance.

3 (B) In the case of any other witnesses, such pay-
4 ments shall be made, subject to rules prescribed by the
5 Commission, by the party at whose instance the witness
6 appears or the deposition is taken.

7 (6) HEARINGS.—Notice and opportunity to be heard
8 upon any proceeding instituted before the Commission shall
9 be given to the respondent and the Secretary or his delegate.
10 If an opportunity to be heard upon the proceedings is given
11 before a hearing examiner of the Commission, neither the
12 respondent nor the Secretary nor his delegate shall be en-
13 titled to notice and opportunity to be heard before the Com-
14 mission upon review, except upon a specific order of the
15 Chairman of the Commission. Hearings before the Commis-
16 sion shall be open to the public, and the testimony, and, if
17 the Commission so requires, the argument, shall be steno-
18 graphically reported. The Commission is authorized to con-
19 tract for the reporting of such hearings, and in such contract
20 to fix the terms and conditions under which transcripts will
21 be supplied by the contractor to the Commission and to
22 others and agencies.

23 (7) REPORTS AND DECISIONS.—(a) A report upon
24 any proceeding instituted before the Commission and a
25 decision thereon shall be made as quickly as practicable.

1 The decision shall be made by a Commissioner in accordance
2 with the report of the Commission, and such decision so
3 made shall, when entered, be the decision of the Commission.

4 (b) It shall be the duty of the Commission to include
5 in its report upon any proceeding its findings of fact or
6 opinion or memorandum opinion. The Commission shall
7 report in writing all its findings of fact, opinions, and mem-
8 orandum opinions.

9 (c) A decision of the Commission dismissing the pro-
10 ceeding shall be considered as its decision.

11 (8) PROCEDURES IN REGARD TO THE HEARING EX-
12 AMINERS.—(a) A hearing examiner shall hear, and make a
13 determination upon, any proceeding instituted before the
14 Commission and any motion in connection therewith, as-
15 signed to such hearing examiner by the Chairman of the
16 Commission, and shall make a report of any such determina-
17 tion which constitutes his final disposition of the proceeding.

18 (b) The report of the hearing examiner shall become
19 the report of the Commission within thirty days after such
20 report by the hearing examiner unless within such period
21 any Commissioner has directed that such report shall be
22 reviewed by the Commission. Any preliminary action by
23 a hearing examiner which does not form the basis for the
24 entry of the final decision shall not be subject to review by
25 the Commission except in accordance with such rules as the

1 Commission may prescribe. The report of a hearing examiner
2 shall not be a part of the record in any case in which the
3 Chairman directs that such report shall be reviewed by the
4 Commission.

5 (9) PUBLICITY OF PROCEEDINGS.—All reports of the
6 Commission and all evidence received by the Commission,
7 including a transcript of the stenographic report of the hear-
8 ings, shall be public records open to the inspection of the
9 public; except that after the decision of the Commission in
10 any proceeding which has become final the Commission
11 may, upon motion of the respondent or the Secretary or his
12 delegate, permit the withdrawal by the party entitled thereto
13 of originals of books, documents, and records, and of models,
14 diagrams, and other exhibits, introduced in evidence before
15 the Commission; or the Commission may, on its own mo-
16 tion, make such other disposition thereof as it deems
17 advisable.

18 (10) PUBLICATION OF REPORTS.—The Commission
19 shall provide for the publication of its reports at the Govern-
20 ment Printing Office in such form and manner as may be best
21 adapted for public information and use, and such authorized
22 publication shall be competent evidence of the reports of the
23 Commission therein contained in all courts of the United
24 States and of the several States without any further proof or
25 authentication thereof. Such reports shall be subject to sale

1 in the same manner and upon the same terms as other public
2 documents.

3 (11) Upon issuance of a citation and notification of the
4 Commission, pursuant to section 10, the Commission shall
5 afford an opportunity for a hearing, and shall issue such or-
6 ders, and make such decisions, based upon findings of fact,
7 as are deemed necessary to enforce the Act.

8 C. MISCELLANEOUS PROVISIONS.—

9 (1) EMPLOYEES.—(a) Appointment and Compensation. The Commission is authorized in accordance with the
10 civil service laws to appoint, and in accordance with the Clas-
11 sification Act of 1949 (63 Stat. 954; 5 U.S.C. chapter 21).
12 as amended to fix the compensation of such employees, in-
13 cluding a Secretary to the Commission, as may be necessary
14 to efficiently execute the functions vested in the Commission.

15 (b) Expenses for Travel and Subsistence. The em-
16 ployees of the Commission shall receive their necessary
17 traveling expenses, and expenses for subsistence while travel-
18 ing on duty and away from their designated stations, as pro-
19 vided in the Travel Expense Act of 1949 (63 Stat. 166; 5
20 U.S.C., chapter 16).

21 (2) EXPENDITURES.—The Commission is authorized
22 to make such expenditures (including expenditures for per-
23 sonal services and rent at the seat of Government and else-
24

1 where, and for law books, books of reference, and periodi-
2 cals), as may be necessary to efficiently execute the func-
3 tions vested in the Commission. All expenditures of the
4 Commission shall be allowed and paid, out of any moneys
5 appropriated for purposes at the Commission, upon presenta-
6 tion of itemized vouchers therefor signed by the certifying
7 officer designated by the Chairman.

8 (3) DISPOSITION OF FILES.—All fees received by the
9 Commission shall be covered into the Treasury as miscel-
10 laneous receipts.

11 (4) FEE FOR TRANSCRIPT OF RECORD.—The Com-
12 mission is authorized to fix a fee, not in excess of the fee
13 fixed by law to be charged and collected therefor by the
14 clerks of the district courts, for comparing, or for preparing
15 and comparing, a transcript of the record, or for copying
16 any record, entry, or other paper and the comparison and
17 certification thereof.

18 PROCEDURES TO COUNTERACT IMMINENT DANGERS

19 SEC. 12. (a) The United States district courts shall
20 have jurisdiction, upon petition of the Secretary, to restrain
21 any conditions or practices in any place of employment
22 which are such that a danger exists which could reasonably
23 be expected to cause death, or serious physical harm im-
24 mediately or before the imminence of such danger can be

1 eliminated through the enforcement procedures otherwise
2 provided by this Act.

3 (b) Upon the filing of any such petition the district
4 court shall have jurisdiction to grant such injunctive relief
5 or temporary restraining order pending the outcome of an
6 enforcement proceeding pursuant to section 11 of this Act.
7 The proceeding shall be as provided by Rule 65 of the
8 Federal Rules, Civil Procedure, except that no temporary
9 restraining order issued without notice shall be effective for
10 a period longer than five days.

11 (c) Whenever and as soon as an inspector concludes
12 that conditions or practices described in subsection (a) exist
13 in any place of employment, he shall inform the affected em-
14 ployees and employers of the danger and that he is recom-
15 mending to the Secretary that relief be sought.

16 (d) If the Secretary unreasonably fails to petition the
17 court for appropriate relief under this section and any em-
18 ployee is injured thereby either physically or financially
19 by reason of such failure on the part of the Secretary, such
20 employee may bring an action against the United States in
21 the Court of Claims in which he may recover the damages
22 he has sustained, including reasonable court costs and
23 attorney's fees.

24 (e) In any case where a temporary restraining order is

1 obtained under this section by the Secretary, the court which
2 grants such relief shall set a sum which it deems proper for
3 the payment of such costs, damages, and attorney's fees as
4 may be incurred or suffered by any employer who is found
5 to have been wrongfully restrained or enjoined. In no case
6 shall any employer wrongfully restrained or enjoined be en-
7 titled to a recovery for costs, damages, and attorney's fees
8 in excess of the sum set by the court.

9 JUDICIAL PROCEEDINGS

10 SEC. 13. (a) (1) Any employer required by an order
11 of the Commission to comply with the standards, regulations,
12 or requirements under this Act, or to pay a penalty, may
13 obtain judicial review of such order by filing a petition for
14 review, within sixty days after service of such order, in the
15 United States court of appeals for the circuit wherein the
16 violation is alleged to have occurred or wherein the em-
17 ployer has its principal office. A copy of the petition shall
18 forthwith be transmitted by the clerk of the court to the
19 Commission and to the Secretary.

20 (2) The Secretary may also obtain judicial review or
21 enforcement of a decision of the Commission as provided in
22 subsection (1) of this section.

23 (3) Until the record in a case shall have been filed in
24 a court, as herein provided, the Commission may at any
25 time, upon reasonable notice and in such manner as it shall

1 deem proper, modify or set aside, in whole or in part any
2 finding, order, or rule made or issued by it.

3 (4) Upon the filing of a petition for review under this
4 section, such court shall have jurisdiction of the proceeding
5 and shall have power to affirm the order of the Commission,
6 or to set aside, in whole or in part, temporarily or per-
7 manently, and to enforce such order to the extent that it is
8 affirmed. To the extent that the order of the Commission is
9 affirmed, the court shall thereupon issue its own order re-
10 quiring compliance with the terms of the order of the Com-
11 mission. The commencement of proceedings under this
12 paragraph shall not, unless specifically ordered by the court,
13 operate as a stay of the order of the Commission.

14 (5) No objection to the order of the Commission shall
15 be considered by the court unless such objection was urged
16 before the Commission or unless there were reasonable
17 grounds for failure to do so. The findings of the Commission
18 as to the facts, if supported by substantial evidence on the
19 record considered as a whole, shall be conclusive, but the
20 court, for good cause shown, may remand the case to the
21 Commission for the taking of additional evidence in such
22 manner and upon such terms and conditions as the court may
23 deem proper, in which event the Commission may make new
24 or modified findings and shall file such findings (which, if
25 supported by substantial evidence on the record considered

1 as a whole, shall be conclusive) and its recommendation,
2 if any, for the modification or setting aside of its original
3 **order, with the return of such additional evidence.**

4 (6) The judgment of the court affirming or setting aside,
5 in whole or in part, any order under this subsection shall be
6 final, subject to review by the Supreme Court of the United
7 States upon certiorari or certification as provided in section
8 1254 of title 28, United States Code.

9 (7) An order of the Commission shall become final
10 under the same conditions as an order of the Federal Trade
11 Commission under section 45 (g) of title 15, United States
12 Code.

13 (b) Any interested person affected by the action of the
14 Board in issuing a standard under section 6 may obtain re-
15 view of such action by the United States Court of Appeals
16 for the District of Columbia by filing in such court within
17 thirty days following the publication of such rule a petition
18 praying that the action of the Board be modified or set aside
19 in whole or in part. A copy of such petition shall forthwith
20 be served upon the Board and thereupon the Board shall
21 certify and file in the court the record upon which the action
22 complained of was issued as provided in section 2112 of
23 title 28, United States Code. Review by the court shall be
24 in accord with the provisions of section 706 of title 5, United

1 States Code. The court, for good cause shown, may remand
2 the case to the Board to take further evidence, and the Board
3 may thereupon make new or modified findings of fact and
4 may modify its previous action and shall certify to the court
5 the record of the further proceedings. The remedy provided
6 by this subsection for reviewing a standard or rule shall be
7 exclusive. The judgment of the court shall be subject to re-
8 view by the Supreme Court of the United States upon certio-
9 rari or certification as provided in section 1254 of title 28,
10 United States Code. The commencement of a proceeding
11 under this subsection shall not, unless specifically ordered
12 by the court, delay the application of the Board's standards.

13 (c) Civil penalties owed under this Act shall be paid
14 to the Secretary for deposit into the Treasury of the United
15 States and shall accrue to the United States and may be
16 recovered in a civil suit in the name of the United States
17 brought in the Federal district court in the district where
18 the violation is alleged to have occurred or where the em-
19 ployer has its principal office.

20 (d) The Federal district courts shall have jurisdiction
21 of actions to collect penalties prescribed in this Act and may
22 provide such additional relief as the court deems appro-
23 priate to carry out the order of the Occupational Safety and
24 Health Appeals Commission.

1 **REPRESENTATION IN CIVIL LITIGATION**

2 **SEC. 14.** Except as provided in section 518 (a) of title
3 28, United States Code, relating to litigation before the
4 Supreme Court and the Court of Claims, the Solicitor of
5 Labor may appear for and represent the Secretary in any
6 civil litigation brought under this Act but all such litigation
7 shall be subject to the direction and control of the Attorney
8 General.

9 **CONFIDENTIALITY OF TRADE SECRETS**

10 **SEC. 15.** All information reported to or otherwise ob-
11 tained by the Secretary or his representative in connection
12 with any inspection or proceeding under this Act which
13 contains or which might reveal a trade secret referred to in
14 section 1905 of title 18 of the United States Code shall be
15 considered confidential for the purpose of that section, ex-
16 cept that such information may be disclosed to other officers
17 or employees concerned with carrying out this Act or when
18 essential in any proceeding under this Act. However, any
19 such information shall be recorded and presented on the
20 official public record, and shall be kept and preserved
21 separately.

22 **VARIATIONS, TOLERANCES, AND EXEMPTIONS**

23 **SEC. 16.** The Board, on the record, after notice and op-
24 portunity for a hearing may provide such reasonable limita-
25 tions and may make such rules and regulations allowing

1 reasonable variations, tolerances, and exemptions to and
2 from any or all provisions of this Act as it may find neces-
3 sary and proper to avoid serious impairment of the national
4 defense. Such action shall not be in effect for more than
5 six months without notification to affected employees and
6 an opportunity being afforded for a hearing.

7
8 **PENALTIES**

9 **SEC. 17.** (a) Any employer who willfully or repeatedly
10 violates the requirements of section 5 of this Act, any stand-
11 ard or rule promulgated pursuant to section 6 of this Act, or
12 regulations prescribed pursuant to this Act, may be assessed
13 a civil penalty of not more than \$10,000 for each violation.

14 (b) Any citation for a serious violation of the require-
15 ments of section 5 of this Act, of any standard or rule promul-
16 gated pursuant to section 6 of this Act, or of any regulations
17 prescribed pursuant to this Act, shall include a proposed
18 penalty of up to \$1,000 for each such violation.

19 (c) Any employer who violates the requirements of sec-
20 tion 5 of this Act, any standard or rule promulgated pursuant
21 to section 6 of this Act, or regulations prescribed pursuant
22 to this Act, and such violation is specifically determined by
23 the Secretary not to be of a serious nature, the Secretary may
24 include in the citation issued for such violation a proposed
25 penalty of up to \$1,000 for each such violation.

(d) Any employer who violates any order or citation

1 which has become final in accordance with the provision of
2 section 10 of this Act may be assessed a penalty of up to
3 \$1,000 for each such violation. When such violation is of a
4 continuing nature, each day during which it continues shall
5 constitute a separate offense for the purpose of assessing the
6 penalty except where such order or citation is pending re-
7 view under section 11 of this Act.

8 (e) Any person who forcibly assaults, resists, opposes,
9 impedes, intimidates, or interferes with any person while
10 engaged in or on account of the performance of inspections or
11 investigatory duties under this Act shall be fined not more
12 than \$5,000 or imprisoned not more than three years, or
13 both. Whoever, in the commission of any such acts, uses a
14 deadly or dangerous weapon, shall be fined not more than
15 \$10,000 or imprisoned not more than ten years or both.
16 Whoever kills a person while engaged in or on account of
17 the performance of inspecting or investigating duties under
18 this Act shall be punished by imprisonment for any term of
19 years or for life.

20 (f) Any employer who violates any of the posting re-
21 quirements, as prescribed under the provisions of this Act,
22 shall be assessed by the Commission a civil penalty of up to
23 \$1,000 for each such violation.

24 (g) Any person who discharges or in any other manner
25 discriminates against any employee because such employee

1 has filed any complaint or instituted or caused to be instituted
2 any proceeding under or related to this Act, or has testified
3 or is about to testify in any such proceeding, shall be assessed
4 a civil penalty by the Commission of up to \$10,000. Such
5 person may also be subject to a fine of not more than
6 \$10,000 or imprisonment of a period not to exceed ten
7 years or both.

8 (h) The Commission shall have authority to assess and
9 collect all penalties provided in this section, giving due con-
10 sideration to the appropriateness of the penalty with respect
11 to the size of the business being charged, the gravity of the
12 violation, the good faith of the employer, and the history
13 of previous violations.

14 (i) For purposes of this section a serious violation shall
15 be deemed to exist in a place of employment if there is a
16 substantial probability that death or serious physical harm
17 could result from a condition which exists, or from one or
18 more practices, means, methods, operations, or processes
19 which have been adopted or are in use, in such place of
20 employment unless the Secretary determines that the
21 employer did not, and could not with the exercise of reason-
22 able diligence, know of the presence of the violation.

23 STATE JURISDICTION AND STATE PLANS

24 SEC. 18. (a) Nothing in this Act shall prevent any
25 State agency or court from asserting jurisdiction under State

1 law over any occupational safety or health issue with respect
2 to which no standard is in effect under section 6.

3 (b) Any State which, at any time, desires to assume
4 responsibility for development and enforcement therein of
5 occupational safety and health standards relating to any
6 occupational safety or health issue with respect to which a
7 Federal standard has been promulgated under section 6 shall
8 submit a State plan for the development of such standards
9 and their enforcement.

10 (c) The Secretary shall approve the plan submitted by
11 a State under subsection (b), or any modification thereof, if
12 such plan in his judgment—

13 (1) designates a State agency or agencies as the
14 agency or agencies responsible for administering the
15 plan throughout the State.

16 (2) provides for the development and enforcement
17 of safety and health standards relating to one or more
18 safety or health issues, which standards (and the en-
19 forcement of which standards) are or will be at least
20 as effective in providing safe and healthful employment
21 and places of employment as the standards promulgated
22 under section 6 which relate to the same issues.

23 (3) provides for a right of entry and inspection
24 of all workplaces subject to the Act which is at least as

effective as that provided in section 9(a) (1), and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under

1 subsection (b), he shall afford the State submitting the plan
2 due notice and opportunity for a hearing before so doing.

3 (c) After the Secretary approves a State plan submitted
4 under subsection (b), he may, but shall not be required
5 to, exercise his authority under sections 9, 10, 11, and 12
6 with respect to comparable standards promulgated under
7 section 6, for the period specified in the next sentence. The
8 Secretary may exercise the authority referred to above until
9 he determines, on the basis of actual operations under the
10 State plan, that the criteria set forth in subsection (c) are
11 being applied, but he shall not make such determination for
12 at least three years after the plan's approval under subsec-
13 tion (c). Upon making the determination referred to in
14 the preceding sentence, the provisions of sections 5(b), 9
15 (except for the purpose of carrying out subsection (c)),
16 10, 11, and 12, and standards promulgated under section 6
17 of this Act, shall not apply with respect to any occupational
18 safety or health issues covered under the plan, but the Secre-
19 tary may retain jurisdiction under the above provisions in
20 any proceeding commenced under section 10 or 11 before
21 the date of determination.

22 (1) The Secretary shall, on the basis of reports submitted
23 by the State agency and his own inspections make a con-
24 firming evaluation of the manner in which each State having
25 a plan approved under this section is carrying out such

1 plan. Whenever the Secretary finds, after affording due
2 notice and opportunity for a hearing, that in the administra-
3 tion of the State plan there is a failure to comply substantially
4 with any provision of the State plan (or any assurance
5 contained therein), he shall notify the State agency of his
6 withdrawal of approval of such plan and upon receipt of
7 such notice such plan shall cease to be in effect, but the State
8 may retain jurisdiction in any case commenced before the
9 withdrawal of the plan in order to enforce standards under
10 the plan whenever the issues involved do not relate to the
11 reasons for the withdrawal of the plan.

12 (g) The State may obtain a review of a decision of the
13 Secretary withdrawing approval of or rejecting its plan by
14 the United States court of appeals for the circuit in which the
15 State is located by filing in such court within thirty days fol-
16 lowing receipt of notice of such decision a petition praying
17 that the action of the Secretary be modified or set aside in
18 whole or in part. A copy of such petition shall forthwith be
19 served upon the Secretary, and thereupon the Secretary shall
20 certify and file in the court the record upon which the deci-
21 sion complained of was issued as provided in section 2112 of
22 title 28, United States Code. Unless the court finds that the
23 Secretary's decision in rejecting a proposed State plan or
24 withdrawing his approval of such a plan to be arbitrary and
25 capricious, the court shall affirm the Secretary's decision. The

1 judgment of the court shall be subject to review by the Su-
2 preme Court of the United States upon certiorari or certifica-
3 tion as provided in section 1254 of title 28, United States
4 Code.

5 FEDERAL AGENCY SAFETY PROGRAMS AND
6 RESPONSIBILITIES

7 SEC. 19. (a) It shall be the responsibility of the head of
8 each Federal agency to establish and maintain an effective
9 and comprehensive occupational safety and health program
10 which is consistent with the standards promulgated under
11 section 6. The head of each agency shall (after consultation
12 with representatives of the employees thereof) —

13 (1) provide safe and healthful places and condi-
14 tions of employment, consistent with the standards set
15 under section 6;

16 (2) acquire, maintain, and require the use of safety
17 equipment, personal protective equipment, and devices
18 reasonably necessary to protect employees;

19 (3) keep adequate records of all occupational acci-
20 dents and illnesses for proper evaluation and necessary
21 corrective action;

22 (4) consult with the Secretary with regard to the
23 adequacy as to form and content of records kept pursu-
24 ant to subsection (a) (3) of this section; and

25 (5) make an annual report to the Secretary with

1 respect to occupational accidents and injuries and the
2 agency's program under this section. Such report shall
3 include any report submitted under section 7902 (e) (2)
4 of title 5, United States Code.

5 (b) The Secretary shall report to the President a sum-
6 mary or digest of reports submitted to him under subsection
7 (a) (5) of this section, together with his evaluations of and
8 recommendations derived from such reports. The President
9 shall transmit annually to the Senate and the House of Rep-
10 resentatives a report of the activities of Federal agencies
11 under this section.

12 (c) Section 7902 (c) (1) of title 5, United States Code
13 is amended by inserting after "agencies" the following: "and
14 of labor organizations representing employees".

15 (d) The Secretary shall have access to records and re-
16 ports kept and filed by Federal agencies pursuant to sub-
17 sections (a) (3) and (5) of this section unless those rec-
18 ords and reports are specifically required by Executive order
19 to be kept secret in the interest of the national defense or
20 foreign policy, in which case the Secretary shall have access
21 to such information as will not jeopardize national defense
22 or foreign policy.

23 TRAINING AND EMPLOYEE EDUCATION

24 SEC. 20. (a) The Secretary of Health, Education, and
25 Welfare, after consultation with the Secretary of Labor, the

1 Board, and with other appropriate Federal departments and
2 agencies, shall conduct, directly or by grants or contracts
3 (1) education programs to provide an adequate supply of
4 qualified personnel to carry out the purposes of this Act,
5 and (2) informational programs on the importance of and
6 proper use of adequate safety and health equipment.

7 (b) The Secretary is also authorized to conduct (direct-
8 ly or by grants or contracts) short-term training of per-
9 sonnel engaged in work related to his responsibilities under
10 this Act.

11 (c) The Secretary, in consultation with the Secretary of
12 Health, Education, and Welfare, shall provide for the estab-
13 lishment and supervision of programs for the education and
14 training of employers and employees in the recognition,
15 avoidance, and prevention of unsafe or unhealthful work-
16 ing conditions in employments covered by this Act, and to
17 consult with and advise employers and employees, and
18 organizations representing employers and employees as to
19 effective means of preventing occupational injuries and
20 illnesses.

21 GRANTS TO THE STATES

22 **SEC. 21.** (a) The Secretary is authorized, during the
23 fiscal year ending June 30, 1971, and the two succeeding
24 fiscal years, to make grants to the States which have desig-
25 nated a State agency under section 18(c) to assist them

1 (1) in identifying their needs and responsibilities in the
2 area of occupational safety and health, (2) in developing
3 State plans under section 18, or (3) in developing plans
4 for—

5 (A) establishing systems for the collection of in-
6 formation concerning the nature and frequency of occu-
7 pational injuries and diseases;

8 (B) increasing the expertise and enforcement capa-
9 bilities of their personnel engaged in occupational safety
10 and health programs; or

11 (C) otherwise improving the administration and
12 enforcement of State occupational safety and health laws,
13 including standards thereunder, consistent with the ob-
14 jectives of this Act.

15 (b) The Secretary is authorized, during the fiscal year
16 ending June 30, 1971, and the two succeeding fiscal years,
17 to make grants to the States for experimental and demon-
18 stration projects consistent with the objectives set forth in
19 subsection (a) of this section.

20 (c) The Governor of the State shall designate the ap-
21 propriate State agency, or agencies, for receipt of any grant
22 made by the Secretary under this section.

23 (d) Any State agency, or agencies, designated by the
24 Governor of the State, desiring a grant under this section
25 shall submit an application therefor to the Secretary.

1 (e) The Secretary shall review the application, and
2 shall, after consultation with the Secretary of Health, Educa-
3 tion, and Welfare, approve or reject such application.

4 (f) The Federal share for each State grant under sub-
5 section (a) or (b) of this section may be up to 90 per
6 centum of the State's total cost. In the event the Federal
7 share for all States under either such subsection is not the
8 same, the differences among the States shall be established
9 on the basis of objective criteria.

10 (g) The Secretary is authorized to make grants to the
11 States to assist them in administering and enforcing programs
12 for occupational safety and health contained in State plans
13 approved by the Secretary pursuant to section 18 of this
14 Act. The Federal share for each State grant under this sub-
15 section may be up to 50 per centum of the State's total cost.
16 The last sentence of subsection (f) shall be applicable in
17 determining the Federal share under this subsection.

18 (h) Prior to June 30, 1973, the Secretary shall, after
19 consultation with the Secretary of Health, Education, and
20 Welfare, transmit a report to the President and to Congress,
21 describing the experience under the program and making
22 any recommendations he may deem appropriate.

23 ECONOMIC ASSISTANCE TO SMALL BUSINESSES

24 SEC. 22. (a) Section 7 (b) of the Small Business Act,
25 as amended, is amended—

1 (1) by striking out the period at the end of "para-
2 graph (5)" and inserting in lieu thereof "; and"; and

3 (2) by adding after paragraph (5) a new para-
4 graph as follows:

5 “(6) to make such loans (either directly or in coopera-
6 tion with banks or other lending institutions through agree-
7 ments to participate on an immediate or deferred basis) as
8 the Administration may determine to be necessary or appro-
9 priate to assist any small business concern in affecting addi-
10 tions to or alterations in the equipment, facilities, or methods
11 of operation of such business in order to comply with the
12 applicable standards promulgated pursuant to section 6 of
13 the Occupational Safety and Health Act or standards
14 adopted by a State pursuant to a plan approved under
15 section 18 of the Occupational Safety and Health Act, if the
16 Administration determines that such concern is likely to
17 suffer substantial economic injury without assistance under
18 this paragraph.”

19 (b) The third sentence of section 7(b) of the Small
20 Business Act, as amended, is amended by striking out “or
21 (5)” after “paragraph (3)” and inserting a comma fol-
22 lowed by “(5) or (6)”.

23 (c) Section 4(c) (1) of the Small Business Act, as
24 amended, is amended by inserting “7(b) (6),” after “7
25 (b) (5),”.

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(6) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

RESEARCH AND RELATED ACTIVITIES

SEC. 23. (a) (1) The Secretary of Health, Education, and Welfare, after consultation with the Secretary, the Board, and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Board in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Board to meet its responsibility for the formulation of safety and health standards under this Act, and the Secretary of Health, Education, and Welfare, on the basis of such research, demonstration, and experiments and any other information

1 available to him, shall develop and publish at least annually
2 such criteria as will effectuate the purposes of this Act.

3 (3) The Secretary of Health, Education, and Welfare
4 shall also conduct special research, experiments, and demon-
5 strations relating to occupational safety and health as are
6 necessary to explore new problems, including those created
7 by new technology in occupational safety and health, which
8 may require ameliorative action beyond that which is other-
9 wise provided for in the operating provisions of this Act.
10 The Secretary of Health, Education, and Welfare shall also
11 conduct research into the motivational and behavioral factors
12 relating to the field of occupational safety and health.

13 (4) The Secretary of Health, Education, and Welfare
14 shall publish within six months of enactment of this Act and
15 thereafter as needed but at least annually a list of all known
16 toxic substances by generic family or other useful group-
17 ing, and the concentrations at which such toxicity is known
18 to occur.

19 (5) The Board shall respond, as soon as possible, to a
20 request by any employer or employee for a determination
21 whether or not any substance normally found in a working
22 place has toxic or harmful effects in such concentration as
23 used or found.

24 (b) The Secretary of Health, Education, and Welfare

1 is authorized to make inspections and question employers
2 and employees as provided in section 9 of this Act in order
3 to carry out his functions and responsibilities under this
4 section.

5 (c) The Secretary is authorized to enter into contracts,
6 agreements, or other arrangements with appropriate public
7 agencies or private organizations for the purpose of conduct-
8 ing studies relating to his responsibilities under this Act. In
9 carrying out his responsibilities under this subsection, the
10 Secretary and the Secretary of Health, Education, and Wel-
11 fare shall cooperate in order to avoid any duplication of efforts
12 under this section.

13 (d) Information obtained by the Secretary, the Board,
14 and the Secretary of Health, Education, and Welfare under
15 this section shall be disseminated by the Secretary to em-
16 ployers and employees and organizations thereof.

17 STATISTICS

18 SEC. 24. (a) In order to further the purposes of this
19 Act, the Secretary shall develop and maintain an effective
20 program of collection, compilation, and analysis of occupa-
21 tional safety and health statistics. Such program may cover
22 all employments whether or not subject to any other pro-
23 visions of this Act but shall not cover employments excluded
24 by section 4 of the Act.

1 (b) To carry out his duties under subsection (a) of
2 this section, the Secretary may:

3 (1) Promote, encourage, or directly engage in
4 programs of studies, information and communication
5 concerning occupational safety and health statistics.

6 (2) Make grants to States or political subdivisions
7 thereof in order to assist them in developing and admin-
8 istering programs dealing with occupational safety and
9 health statistics.

10 (3) Arrange, through grants or contracts, for the
11 conduct of such research and investigations as give
12 promise of furthering the objectives of this section.

13 (c) The Federal share for each State grant under sub-
14 section (b) of this section may be up to 50 per centum of
15 the State's total cost.

16 (d) The Secretary may, with the consent of any State
17 or political subdivision thereof, accept and use the services,
18 facilities, and employees of the agencies of such State or
19 political subdivision, with or without reimbursement, in order
20 to assist him in carrying out his functions under this section.

21 (e) On the basis of the records made and kept pursuant
22 to section 9 (c) of this Act, employers shall file such reports
23 with the Secretary as he shall prescribe by regulation, as
24 necessary to carry out his functions under this Act.

(f) Agreements between the Department of Labor and the States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded by grants or contracts made under this Act.

EFFECT ON OTHER LAWS

SEC. 25. (a) Nothing in this Act shall be construed or held to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of, employment.

(b) Nothing in this Act shall apply to working conditions of employees with respect to whom other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2024) exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(c) The safety and health standards promulgated under the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), the Service Contract Act (41 U.S.C. 351 et seq.), and the National Foundation on Arts and Humanities Act (20

1 U.S.C. 951 et seq.), are deemed repealed and rescinded on
2 the effective date of corresponding standards promulgated
3 under this Act, as determined by the Secretary of Labor to
4 be corresponding standards.

5 (d) Nothing in this Act shall apply to any employer
6 who is a contractor or subcontractor for construction, altera-
7 tion, and/or repair of buildings or works, including painting
8 or decorating in the regular course of his business.

9 (e) The Secretary shall, within three years after the
10 effective date of this Act, report to the Congress his recom-
11 mendations for legislation to avoid unnecessary duplication
12 and to achieve coordination between this Act and other Fed-
13 eral laws.

14 (f) Section 2 of the Act of August 9, 1969 (Public
15 Law 91-54; 83 Stat. 96), is hereby amended to read as
16 follows:

17 "SEC. 2. The first section and section 2 of the Act of
18 August 13, 1962, are each amended by inserting 'and Con-
19 struction Safety and Health' before 'standards' each time it
20 appears."

21 (g) Subsection 107 of Public Law 91-54 (83 Stat.
22 96) is amended to read as follows:

23 "SEC. 107. (a) (1) It shall be a condition of each con-
24 tract which is entered into under legislation subject to Reor-
25 ganization Plan Numbered 14 of 1950 (64 Stat. 1267).

and is for construction, alteration, and or repair, including painting and decorating, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary by regulation based on proceedings pursuant to section 553 of title 5, United States Code, provided that such proceedings include a hearing of the nature authorized by said section. The Secretary of Labor shall consult with the Advisory Committee on Construction Safety and Health created by subsection (f) and shall give due regard to the Committee's recommendations and information in framing proposed rules or subjects and issues in setting standards in accordance with section 443 of title 5, United States Code.

"(2) Each employer as defined in section 3 (6) of the Occupational Safety and Health Act who is a contractor or subcontractor for construction, alteration, and or repair of buildings or works, including painting and decorating in the regular course of his business, shall comply with construction safety and health standards promulgated under this section."

(b) Subsection (b) of section 107 of Public Law 91-54 (83 Stat. 96) is amended to read as follows:

1 “(b) (1) The Secretary is authorized to make inspec-
2 tions and investigations pursuant to sections 9 (a), (c), and
3 (d) of the Occupational Safety and Health Act. If upon the
4 basis of inspection or investigation, the Secretary believes
5 that an employer subject to the provisions of section 107
6 (a) (2) has violated any health or safety standard promul-
7 gated under section 107 (a) of this Act, or has violated the
8 condition required of any contract to which subsection (a)
9 of this section applies, the Secretary shall issue a citation
10 to the employer unless the violation is de minimis. The
11 provisions of section 10 (except subsection (c) thereof)
12 of the Occupational Safety and Health Act shall apply to
13 citations issued under this Act. In issuing citations under this
14 Act, the Secretary shall issue each citation at the earliest
15 possible time from the occurrence of the alleged violation
16 but in no event later than forty-five days from the occurrence
17 of the alleged violation except that for good cause the Secre-
18 tary may extend such period up to a maximum of ninety
19 days from such occurrence. The provisions of section 12 of
20 the Occupational Safety and Health Act shall also apply to
21 this Act.

22 “(2) If, after notice and opportunity for hearing, the
23 Commission determines that a violation has occurred of any
24 condition prescribed by this section for a contract of the type
25 described in clause (1) or (2) of section 103 (a) of this

1 Act, the governmental agency for which the contract work
2 is done shall have the right to cancel the contract, and to
3 enter into other contracts for the completion of the contract
4 work, charging any additional cost to the original contractor.
5 If, after notice and opportunity for hearing, the Commission
6 determines that a violation has occurred of any condition
7 prescribed by this section for a contract of the type described
8 in clause 3 of section 103 (a), the governmental agency by
9 which financial guarantee, assistance, or insurance for the
10 contract work is provided shall have the right to withhold
11 any such assistance attributable to the performance of the
12 contract. Section 104 of this Act shall not apply to the en-
13 **forcement of this section."**

14 (i) Subsection (c) of section 107 of Public Law 91-54
15 (83 Stat. 96) is hereby repealed and subsection (d) of that
16 section is redesignated as subsection "(c)" and is amended
17 to read as follows:

18 "(c) (1) If the Commission determines on the record
19 after an opportunity for hearing that by repeated willful or
20 grossly negligent violations of this Act, a contractor or sub-
21 contractor has demonstrated that the provisions of subsec-
22 tion (b) of this section and actions by the Secretary under
23 paragraph (3) of this subsection are not effective to protect
24 the safety and health of his employees, the Commission shall
25 make a finding to that effect and shall, not sooner than thirty

1 days after giving notice of the findings to all interested per-
2 sons, transmit the name of such contractor or subcontractor
3 to the Comptroller General.

4 " (2) The Comptroller General shall distribute each
5 name so transmitted to him to all agencies of the Government.
6 Unless the Commission otherwise recommends, no contract
7 subject to this section shall be awarded to such contractor or
8 subcontractor or to any person in which such contractor or
9 subcontractor has a substantial interest until three years have
10 elapsed from the date the name is transmitted to the Comp-
11 troller General. If, before the end of such three-year period,
12 the Commission, after affording interested persons due notice
13 and opportunity for hearing, is satisfied that a contractor or
14 subcontractor whose name he has transmitted to the Comp-
15 troller General will thereafter comply responsibly with the
16 requirements of this section, the Commission shall terminate
17 the application of the preceding sentence to such contractor
18 or subcontractor (and to any person in which the contractor
19 or subcontractor has a substantial interest); and when the
20 Comptroller General is informed of the Commission's action
21 he shall inform all agencies of the Government thereof.

22 " (3) Any person aggrieved by an action of the Commis-
23 sion under subsections (b) or (c) of this section may seek
24 a review of such action in the appropriate United States
25 Court of Appeals pursuant to the provisions of section 13 (a)

1 of the Occupational Safety and Health Act. The Secretary
2 may also obtain judicial review or seek enforcement as pro-
3 vided in sections 13 (a) and 13 (c) and (d), and section
4 14 of the Occupational Safety and Health Act."

5 (j) Section 107 of Public Law 91-54 (83 Stat. 96) is
6 amended by adding a new subsection "(d)" immediately
7 after the new section "(c)". Subsection (e) of section 107
8 of Public Law 91-54 (83 Stat. 96) is hereby redesignated
9 as subsection "(f)" and subsection (f) of section 107 of
10 Public Law 91-54 (83 Stat. 96) is accordingly redesignated
11 as subsection "(g)". The new subsection "(d)" shall read
12 **as follows:**

13 "(d) (1) Any employer who willfully or repeatedly
14 violates the standards promulgated by the Secretary under
15 section 107 (a) of this Act, may be assessed a civil penalty
16 of not more than \$10,000 for each violation.

17 "(2) Any citation for a serious violation of the stand-
18 ards promulgated by the Secretary under section 107 (a) of
19 this Act shall include a proposed penalty of up to \$1,000
20 for each such violation.

21 "(3) Any employer who violates the standards pro-
22 mulgated by the Secretary under section 107 (a) of this
23 Act and such violation is specifically determined by the
24 Secretary not to be of a serious nature, the Secretary may

1 include in the citation issued for such a violation a proposed
2 penalty of up to \$1,000 for each such violation.

3 “(4) Any employer who violates any order or cita-
4 tion which has become final in accordance with the
5 provisions of section 10 of the Occupational Safety and
6 Health Act may be assessed a penalty of up to \$1,000 for
7 each such violation. When such violation is of a continuing
8 nature, each day during which it continues shall constitute
9 a separate offense for the purpose of assessing the penalty
10 except where such order or citation is pending review under
11 section 11 of the Occupational Safety and Health Act.

12 “(5) Any employer who violates any of the posting
13 requirements, as prescribed in section 10 (c) of the Occupa-
14 tional Safety and Health Act, shall be assessed by the Com-
15 mission a civil penalty of up to \$1,000 for each such
16 violation.

17 “(6) Any person who discharges or in any other man-
18 ner discriminates against any employee because such em-
19 ployee has filed any complaint or instituted or caused to be
20 instituted any proceeding under or related to this Act, or
21 has testified or is about to testify in any such proceeding,
22 shall be assessed a civil penalty by the Commission of up
23 to \$10,000. Such person may also be subject to a fine of

not more than \$10,000 or imprisonment of a period not to exceed ten years, or both.

"(7) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of inspections or investigatory duties under this Act shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years or both. Whoever kills a person while engaged in or on account of the performance of inspecting or investigating duties under this Act shall be punished by imprisonment for any term of years or for life.

"(8) The Commission shall have authority to assess and collect all penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

"(9) For the purpose of this subsection a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or proc-

1 esses which have been adopted or are in use, in such place
2 of employment unless the Secretary determines that the em-
3 ployer did not, and could not with the exercise of reasonable
4 diligence, know of the presence of the violation.”

5 AUDITS

6 Sec. 26. (a) Each recipient of a grant under this Act
7 shall keep such records as the Secretary shall prescribe, in-
8 cluding records which fully disclose the amount and disposi-
9 tion by such recipient of the proceeds of such grant, the
10 total cost of the project or undertaking in connection with
11 which such grant is made or used, and the amount of that
12 portion of the cost of the project or undertaking supplied by
13 other sources, and such other records as will facilitate an ef-
14 fective audit.

15 (b) The Secretary and the Comptroller General of the
16 United States, or any of their duly authorized representa-
17 tives, shall have access for the purpose of audit and examina-
18 tion to any books, documents, papers, and records of the
19 recipients of any grant under this Act that are pertinent
20 to any such grant.

21 REPORTS

22 Sec. 27. Within one hundred and twenty days follow-
23 ing the convening of each regular session of each Congress,
24 the Secretary and the Secretary of Health, Education, and
25 Welfare shall each prepare and submit to the President for

transmittal to the Congress a report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of occupational safety and health, and any other relevant information, and including any recommendations to effectuate the purposes of this Act.

OBSERVANCE OF RELIGIOUS BELIEFS

SEC. 28. Nothing in this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such medical examination, immunization, or treatment is necessary for the protection of the health or safety of others.

APPROPRIATIONS

SEC. 29. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

SEC. 30. This Act shall take effect one hundred and twenty days after the date of its enactment.

SEPARABILITY

SEC. 31. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

91st CONGRESS 2d Session	}	HOUSE OF REPRESENTATIVES	{	REPORT No. 91-1291
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OCCUPATIONAL SAFETY AND HEALTH ACT

JULY 9, 1970.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor,
submitted the following

REPORT

[To accompany H.R. 16785]

The Committee on Education and Labor, to whom was referred the bill (H.R. 16785) to assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes; having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Occupational Safety and Health Act".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(3) by providing for research in the field of occupational safety and health, guarding the psychological factors involved, and by developing innovative methods, techniques and approaches for dealing with occupational safety and health problems;

(4) by studying ways to eliminate occupational diseases, establishing causal connections between disease and work in occupational conditions, and conducting other research relative to health problems, in recognition of the fact that occupational health standards present problems of a different nature from those involved in occupational safety;

(5) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(6) by providing for the development, promulgation, and effective enforcement of occupational safety and health standards;

(7) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, in bringing them in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(8) by providing for appropriate accident and health reporting procedures which will bring within the objectives of this Act and accurately describe the nature of the occupational safety and health problem; and

(9) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "interstate" means trade, traffic, commerce, transportation or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States other than a State as defined in paragraph (6) of this subsection, or between points in the same State but through a point outside thereof.

(3) The term "person" means one of more individuals, partnerships, firms, corporations, business trusts, local governments, or any organized group of persons.

(4) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State, except that it shall include a public contractor which is subject to the jurisdiction of such one State, whether or not considered with public funds, which the employee engaged in the administration or maintenance of a bridge or tunnel.

(5) The term "employee" means an employee of an employer who is engaged in a business of his employer which affects commerce.

(6) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(7) The term "occupational safety and health standard" means a standard which relates to the condition of the equipment or use of any or more machines, equipment, materials, methods or processes, or to any other thing, which is necessary or appropriate to provide safe or healthful employment and places of employment.

(8) The term "Federal consensus standard" means any occupational safety and health standard or standard or threshold which (A) has been adopted and promulgated by a nationally recognized standards-producing organization or the appropriate agency of one of the States, or by the Secretary, after personal agreement and approval by one or more of the States, or if the standard have reached international agreement, or its equivalent, (B) was promulgated in a manner which afforded an opportunity for those having to be persuaded, and if it has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(9) The term "established Federal standard" means any standard occupational safety and health standard established by an agency of the United States and contained in effect in or pursuant to any Act of Congress in force on the date of enactment of this Act.

APPLICABILITY OF ACT

SEC. 4. (a) This Act shall apply only with respect to employment performed in a workplace in a State, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, or the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no Federal district courts having jurisdiction.

(b)(1) Nothing in this Act shall be deemed to repeal or modify any other Federal law prescribing safety or health requirements or the standards, rules, or regulations promulgated pursuant to such law.

(2) The safety and health standards promulgated under the Walsh-Healy Public Contracts Act (41 U.S.C. 35 et seq.), the Service Contract Act (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (83 Stat. 96, 40 U.S.C. 333), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.), are deemed replaced on the effective date of corresponding standards promulgated under this Act, as determined by the Secretary of Labor to be corresponding standards.

(3) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

DUTIES OF EMPLOYERS

SEC. 5. Each employer—

(1) shall furnish to each of his employees employment and a place of employment which is safe and healthful, and

(2) shall, except as provided in section 17, comply with occupational safety and health standards and with interim standards which are promulgated under this Act.

INTERIM SAFETY AND HEALTH STANDARDS

SEC. 6. The Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an interim standard, any national consensus standard, any established Federal standard then in effect (not limited to its present area of application), and any standard proposed by a nationally recognized standards-producing organization by other than a consensus method, unless he determines that the promulgation of such a standard as an interim standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees. No such standard shall be promulgated without a public hearing with respect thereto at which interested persons are afforded an opportunity to express their views, but in other respects section 553 of title 5, United States Code, shall be applicable in carrying out this section. Each interim standard shall stay in effect until superseded by another interim standard or until superseded pursuant to a rule issued and in effect under section 7. The Secretary shall commence (by appointing an advisory committee) a proceeding under section 7 for the promulgation of an occupational safety and health standard dealing with the same subject matter as each interim standard or standards, and any additional occupational safety or health issues he deems relevant, within ninety days after he promulgates such interim standard.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

SEC. 7. (a) The Secretary may, by rule, promulgate, modify, or revoke any occupational safety and health standard in the following manner:

(1) Whenever the Secretary upon the basis of information submitted to him in writing by an interested person, a representative of an organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, a State, or a political subdivision of a State, or on the basis of information otherwise available to him, determines that such a rule should be prescribed in order to serve the objectives of this Act, and whenever he is required to do so by section 6, the Secretary shall appoint an advisory committee under section 8(b) of this Act, which shall submit to him its recommendations regarding the rule to be prescribed which will carry out the

(2) Such standard shall be effective for a period not to exceed six months unless, prior to the expiration of such period a proceeding under paragraph (3) of this subsection has been commenced and is pending, but shall then be effective only until the termination of that proceeding.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a hearing in accordance with sections 556 and 557 of title 5, United States Code, and the standard as published shall also serve as a proposed rule for the hearing.

(d) Whenever the Secretary promulgates any standard, makes any rule, order, decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, and such statement shall be published in the Federal Register.

ADMINISTRATION; ADVISORY COMMITTEES

SEC. 8. (a) In carrying out his responsibilities under this Act, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and employees of such agency with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 in section 5332 of title 5, United States Code, including traveltime; and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

(b) The Secretary shall appoint advisory committees to recommend occupational safety and health standards under section 7(a) of this Act before the commencement of proceedings thereunder. Each such advisory committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of the committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards-producing organizations, but the number of persons so appointed to any advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under subsection (a)(2) of this section. The Secretary shall pay to any State which is the employer of a member of the committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on the committee. Any meeting of the committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of the committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

(c)(1) The Secretary and the Secretary of Health, Education, and Welfare shall appoint a National Advisory Committee on Occupational Safety and Health hereafter in this subsection referred to as the "Committee"). The Committee shall consist of twenty members appointed without regard to the civil service laws and composed equally of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Secretary shall appoint all members of the Committee except for occupational health representatives who shall be appointed by the Secretary of Health, Education, and Welfare. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to the Secretaries of Labor and Health, Education, and Welfare on matters relating to the implementation of this Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(3) The members of the Committee shall be compensated in accordance with the provisions of subsection (a)(2) of this section.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

INSPECTIONS, INVESTIGATIONS, AND REPORTS

Sec. 9. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter upon at reasonable times any workplace where work is performed to which this Act applies; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question any such employer, owner, operator, agent or employee.

(b) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 relating to the witnesses and the production of books, papers, and documents, of the Federal Trade Commission Act of September 16, 1914 (15 U.S.C. 49-50), are hereby made applicable to the jurisdiction, power, and duties of the Secretary or any officers designated by him.

(c) Each employer shall make, keep, and preserve, and make available to the Secretary such record of his activities concerning the requirements of this Act, and shall make reports therefrom to the Secretary, as he may prescribe by regulation or order as necessary or appropriate for the enforcement of this Act. The Secretary shall also make such regulations as may be necessary to assure that employers keep their employees continuously informed of their rights, privileges, and obligations under this Act. The Secretary in cooperation with the Secretary of Health, Education, and Welfare shall make regulations requiring employers to keep records of all work-related injuries, diseases, and ailments which arise from conditions present in the working environment.

(d) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be deemed with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of effort in obtaining information shall be reduced to the maximum extent feasible.

(e) A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany any person who is making an inspection under subsection (a) of any workplace.

CITATIONS FOR VIOLATIONS

Sec. 10. (a) If upon inspection or investigation, the Secretary determines that an employer or his authorized agent (1) or section 9, any rule or order issued under section 7(b), or any regulation prescribed under section 9(c), and that a serious danger exists or reason of any such violation, he shall issue a citation forthwith to the employer for such violation. Each such citation shall (1) be in writing; (2) describe with particularity the nature of the violation, including a reference to the provision of the standard, rule, order, or regulation alleged to have been violated; and (3) the period of time within which it must be corrected.

(b) If upon inspection or investigation, the Secretary determines that an employer has violated clause (1) of section 9, or a rule or order issued under section 7(b), or any regulation prescribed under section 9(c), and that a serious danger exists, or any rule or order issued under section 7(b), and that no serious danger exists by reason of such violation, he shall issue a citation forthwith to the employer for such violation. Each such citation shall (1) be in writing; (2) describe with particularity the nature of the violation, including a reference to the provision of the standard, rule, order, or regulation alleged to have been violated; and (3) the period of time within which it must be corrected. For purposes of this subsection, an employer or shall not

be deemed to have violated a citation issued for a violation of clause (1) of section 5 where a serious danger exists if the employer is in compliance with an applicable interim standard, occupational health or safety standard, promulgated under this Act or under a State plan applicable under section 17(c).

(c) If, upon inspection or investigation, the Secretary determines that an employer has violated clause (1) or (2) of section 5, and specifically determines, together with his reasons, that no serious danger exists by reason of such violation, he shall issue a citation forthwith to the employer for such violation. Each such citation shall (1) be in writing, (2) describe with particularity the nature of the violation, including a reference to the provision of the standard, rule, order, duty, or regulation alleged to have been violated.

(d) Where a citation is issued under subsection (a) or (b) for a violation which might cause cumulative or latent ill effects, such citation shall specify, where feasible, a period during which employers shall accurately measure the exposure of employees to such danger.

(e) Each citation issued under this section or a copy or copies thereof shall be prominently posted (as prescribed in regulations made under section 9(c)) at or near each place a violation referred to in the citation occurred.

(f) For purposes of this Act a "serious danger" shall be deemed to exist in a place of employment if there is a substantial probability that at any time death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment.

PROCEDURES FOR ENFORCEMENT

SEC. 11. (a) If, after an inspection or investigation, the Secretary issues a citation under section 10 (a) or (b), the Secretary shall, within ten working days of the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 15 and that he has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If such notice is not issued by the Secretary within such ten-day period then such citation and proposed assessment of penalty shall be void. If, within fifteen working days from the receipt of such a notice, the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, the citation and the assessment, as proposed, shall be final and not subject to review by any court or agency, and for purposes of subsection (c) shall be considered an order issued by the Secretary under subsection (b).

(b) If an employer notifies the Secretary that he intends to contest a citation issued under section 10 (a) or (b) or proposed assessment of penalty or if the Secretary determines an employer has failed to correct a violation for which such citation has been issued within the period permitted for its correction (which period shall not begin to run until the termination of proceedings under this subsection), the Secretary shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section), and shall, if he determines such citation is valid, issue an order, based on findings of fact, confirming, denying, or modifying the citation or assessment of penalty, or, if he determines the employer has failed to correct such violation within such period, issue such orders, based on findings of fact, as may be necessary for the correction of the violation for which the citation was issued, and for the assessment and collection of any penalty under section 15 (a), (b), or (c). The Secretary shall give such person the information required by section 554(b) of such title at least fifteen days prior to hearing. In proceedings under this subsection, the Secretary shall consider, among other things, the validity of any standard, rule, order, or regulation alleged to have been violated, and the reasonableness of the period of time permitted for the correction of the violation.

(c) The Secretary shall have power, upon issuance of an order under subsection (b), to petition any United States district court within the district where a violation is alleged to have occurred or where the employer has its principal office for appropriate relief. The United States district courts shall have jurisdiction to enforce (by restraining order, injunction, or otherwise) any order of the Secretary issued under subsection (b). Except in the case of an order which has become final under section 11(a), any person adversely affected or aggrieved by an order of the Secretary issued under subsection (b) may obtain review of such order by the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office by filing in such

must, within thirty days following the issuance of such order a petition praying that the action of the Secretary be modified or set aside in whole or in part. Review by the court shall be in accord with the provisions of section 706 of title 5, United States Code. A petition for review by the court shall not stay an order of the Secretary under subsection (b) unless otherwise provided by the court.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

Sec. 12. (a) If an inspection or investigation of a place of employment discloses that imminent danger exists in such place of employment, the Secretary may issue an order prohibiting the employment or possession of any individual in locations or under conditions where such an imminent danger exists, except to correct or remove it. Such order may remain in effect for not more than five days from the date of its issuance.

(b) If, upon inspection or investigation of a place of employment, the Secretary determines that an imminent danger exists in such place of employment, the Secretary may bring a civil action in the United States district court for the district where the imminent danger exists or where the employer has the principal office for a temporary restraining order or injunction prohibiting the employment or possession of any individual in locations or under conditions where such an imminent danger exists, except to correct or remove it. An action may be brought under this subsection while an order of the Secretary under subsection (a) is in effect. If, in a proceeding under section 14, it is finally determined that any condition which existed, or any practice, means, method, operation, or process which was adopted or in use in a place of employment did not violate section 5, and it was upon the basis of the existence of such condition or the adoption of such practice, means, method, operation, or process that an order was issued under this subsection, then such order shall no longer be in effect.

(c) If the Secretary arbitrarily or capriciously issues or fails to issue an order under subsection (a) and any person is injured thereby either physically or financially by reason of such order or failure to issue such order, such person may bring an action against the United States in the Court of Claims in which he may recover the damages he has sustained, including reasonable court costs and attorneys' fees.

(d) For purpose of this section an imminent danger shall be deemed to exist in a place of employment if such danger could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated.

REPRESENTATION IN CIVIL LITIGATION

Sec. 13. Except as provided in section 5184a of title 28, United States Code, relating to litigation before the Supreme Court and the Court of Claims, the Secretary of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General.

CONFIDENTIALITY OF TRADE SECRETS

Sec. 14. All information reported to or obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1401 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees connected with carrying out this Act or when relevant to any proceeding under this Act.

PENALTIES

Sec. 15. (a) Any employer who (1) removed a citation under section 10(a), (2) fails to correct a violation for which a citation has been issued under section 10(a), (3) during the period permitted for its correction (which period shall not begin to run until the termination of any proceeding under section 1401), or (4) violates an order issued under section 12, shall be deemed to be "knowingly" in violation of the provisions of section 1401, a civil penalty of not more than \$1,000 for each violation. These violations shall be a separate offense. When the violation is of a continuing nature, each day during which a continuous or a systematic course is pursued is a separate offense. Fines for the hearing held under section 11(b) shall be assessed in a separate offense, except during the time a review of the order under section 12 is pending, or such review is pending and during the time allowed

in the order under section 11(b) for correction. The Secretary may compromise, mitigate, or settle any claim for civil penalties. In assessing the penalty consideration shall be given to the appropriateness of the penalty, to the size of the business of the person charged, to the gravity of the violation, to the history of previous violations, and to the good faith of the employer.

(b) Any employer who receives a citation under section 10(b), or fails to correct a violation for which a citation has been issued under section 10(b) within the time prescribed for its correction (which period shall not begin to run until the termination of any proceedings under section 11(b)), may be assessed by the Secretary, pursuant to an order issued under section 11(b), a civil penalty of not more than \$1,000 for each violation. Each violation shall be a separate offense. When the violation is of a continuing nature, each day during which it continues after a reasonable time specified in an initial decision following the hearing held under section 11(b) shall constitute a separate offense except during the time a review of the order under section 11(b) may be taken, or such review is pending and during the time allowed in the order under section 11(b) for correction. The Secretary may compromise, mitigate, or settle any claim for civil penalties. In assessing the penalty consideration shall be given to the appropriateness of the penalty, to the size of the business of the person charged, to the gravity of the violation, to the history of previous violations, and to the good faith of the employer.

(c) Any employer who willfully violates any standards promulgated under sections 6 and 7 of this Act may be assessed by the Secretary, pursuant to an order issued under section 11 of this Act, a civil penalty of not more than \$10,000 for each violation. In assessing the penalty, consideration shall be given to the appropriateness of the penalty to the size of the business of the person charged, to the gravity of the violation, to the history of previous violations, and to the good faith of the employer.

(d) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of inspections or investigatory duties under this Act shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years or both. Whoever kills any person while engaged in or on account of the performance of inspecting or investigating duties under this Act shall be punished by imprisonment for any term of years or for life.

(e) Advance notice may be given of investigations necessary for the Secretary and the Secretary of Health, Education, and Welfare to effectively obtain, utilize, or disseminate information relating to health or safety conditions, the causes of accidents, diseases, and physical impairments; however, any person who gives advance notice of any inspection to be conducted under this Act shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(f) Any person who discriminates against any employee because of any action such employee has taken on behalf of himself or others, to secure the protection afforded by this Act shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

VARIATIONS, TOLERANCES, AND EXEMPTIONS

SEC. 16. The Secretary may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

STATE JURISDICTION AND STATE PLANS

SEC. 17. (a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6 or 7.

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 7 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b) or any modification thereof, or such plan in his judgment—

1. designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

2. provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards and the enforcement of which standards are or will be at least as effective as existing safe and healthful employment and places of employment as the standards promulgated under section 7 apply relative to the same issues,

3. provides for a system of safety and inspection of all workplaces subject to the law which is at least as effective as that provided in section 9(a), (b), (d), and (e), and includes a prohibition of adverse action of employers,

4. contains sufficient resources (and such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurance that such State will devote adequate funds to the administration and enforcement of such standards,

(6) makes all standards enforceable under the plan applicable to all employees of public agencies of the State and its political subdivisions,

(7) requires compliance by the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information as the Secretary shall from time to time require.

(b) If the Secretary rejects a plan submitted under subsection (a), he shall afford the State submitting the plan, due notice and opportunity for a hearing before so doing.

(c) After the Secretary approves a State plan submitted under subsection (a), he may, but shall not be required to, exercise his authority under sections 9, 10, 11, and 12 with respect to comparable standards promulgated under section 7 for the period specified in the next sentence. The Secretary may exercise the authority referred to above and be determined, on the basis of actual operations under the State plan, that the criteria set forth in subsection (a) are being applied, but he shall not make such determination for at least three years after the plan is approved under subsection (a). Upon making the determination referred to in the preceding sentence, the provisions of sections 9, 10, 11, and 12 for purposes of exercising his authority (11, 12, 13, and 14) and standards promulgated under section 7 of this Act shall not apply with respect to any occupational safety or health issue covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 10 or 12 before the date of determination.

(d) The Secretary shall, on the basis of reports submitted by the State agency and his own inspection, make a continuing evaluation of the manner in which such State having a plan approved under this section is enforcing its own plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing that is the sole remedy at the State plan level, or if he is unable satisfactorily to work problems of the State plan (or any alternative national measure), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect. But the State may make provision to any one enforcement issue not withdrawn of the plan in order to enforce standards under the plan whenever the notice involved does not relate to the issue or to the withdrawal of the plan.

(e) The Secretary shall, at the request of a decision of the Secretary withdrawing approval of or refusing to plan by the United States court of appeals for the circuit in which the State is located or filing in such court within thirty days following receipt of notice of such decision a petition praying that the review of the decision be recalled or set aside in whole or in part. A copy of such petition shall be served upon the Secretary, and thereafter the Secretary shall not be bound by the court's decision upon which the decision complained of was based as provided in section 2117 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is by arbitrary and capricious, the court shall affirm the Secretary's action. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certificate or certification as provided in section 2114 of title 28, United States Code.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

SEC. 18. (a) It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 7. The head of each agency shall (after consultation with representatives of the employees thereof)—

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 7;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action; and

(4) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e)(2) of title 5, United States Code.

(b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(4) of this section, together with his evaluation of and recommendations derived from such reports. The President shall transmit annually to the Senate and House of Representatives a report of the activities of Federal agencies under this section.

(c) Section 7902(c)(1) of title 5, United States Code is amended by inserting after "agencies" the following: "and of labor organizations representing employees".

RESEARCH AND RELATED ACTIVITIES

SEC. 19. (a)(1) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria enabling the Secretary to meet his responsibility for the formulation of safety and health standards under this Act; and the Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria which if applied will assure that no employee will suffer diminished health or life expectancy as a result of his work experience.

(3) The Secretary of Health, Education, and Welfare shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this Act. The Secretary of Health, Education, and Welfare shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

(4) The Secretary, in conjunction with the Secretary of Health, Education, and Welfare, shall as soon as practicable develop procedures to assure that all exposure to substances, conditions, or processes he has determined or reasonably believes will result in dangers to health or safety is accurately measured and recorded by employers.

In complying with the provisions of this paragraph—

(A) If such substance, condition, or process is not covered by a standard promulgated by the Secretary, or criteria established by the Secretary of Health, Education, and Welfare as provided under section 19(a)(2) of this Act, the employer may be required by the Secretary or the Secretary of Health, Education, and Welfare to measure or record concentrations or exposures to employees only upon a determination that the health or safety of workers may be in danger and further information is necessary to determine the existence of that danger and the steps necessary for correction.

(B) If such substance, condition, or process is covered by criteria issued by the Secretary of Health, Education, and Welfare as provided by section 19(a)(2), the Secretary may, if he finds it necessary to meet the purposes of this Act, require an employer to measure or record the particular substance.

(c) If such a substance, condition, or process is covered by a standard promulgated by the Secretary and if the employer is found not to be in compliance with the standard, he shall be required to measure and record the particular substances, as provided by regulation, for the period deemed necessary by the Secretary to insure future compliance with such standard.

(d) Any required measurement or recording under this subsection shall be required only where such measurement is technologically feasible and the equipment is available at reasonable cost, and shall be required and shall comply with section 9(c) of this Act.

(e) The Secretary of Health, Education, and Welfare shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known or potentially large substances and the sources thereof at which such injury is known to occur, and shall disseminate following a request by any employer or authorized representative of any group of employees whether an organization formally found in the working place has potentially injurious harmful effects in such concentration as used or found, and shall collect such data concerning both the employees and affected employers as may be feasible. Within seven days of such dissemination by the Secretary of Health, Education, and Welfare of potential toxicity of any substance, an employer shall not require any employee to be exposed to such substance designated above in toxic or greater concentrations unless it is accompanied by information, made available to employees, by label or other appropriate means, of the known hazard or toxic or less harmful effects the nature of the substance, and the safe, systematic, recognized treatment, and proper conditions and precautions of safe use, and personal protective equipment is supplied which allow controlled work practices to be performed with such equipment or notes such exposed employee has advised himself been notified of before the period necessary to avoid such danger without loss of regular compensation for such period.

(f) The Secretary of Health, Education, and Welfare is authorized to make inspections and require employers and employees as provided in section 9 of this Act in order to carry out his functions and responsibilities under this section.

(g) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies referred to in this subsection and applying of research based upon such health standards under section 7 of this Act. In carrying out his responsibilities under this subsection, the Secretary and the Secretary of Health, Education, and Welfare shall cooperate in order to avoid duplication of effort under this section.

(h) The Secretary, after consultation with the Secretary of Health, Education, and Welfare, and with the agreement of all in such State as may be necessary to such State shall evaluate such agreement and health inspection systems for approval and for inclusion in the division necessary to carry out his responsibilities under this Act.

(i) Information obtained by the Secretary and the Secretary of Health, Education, and Welfare under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.

TRAINING AND EMPLOYEE EDUCATION

Sec. 20. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary of Labor and with such appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct (directly or by grants or contracts) informational training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall provide for the establishment and improvement of programs for the education and training of employees and employers in the recognition, avoidance, and correction of unsafe or unhealthful working conditions, a comprehensive program for such use, and in control with and safety employees and employers, and responsible concerning employers and conditions as to effective means of preventing occupational injuries and illnesses.

GRANTS TO THE STATES

SEC. 21. (a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 17(c) to assist them (1) in identifying their needs and responsibilities in the area of occupational safety and health, (2) in developing State plans under section 17, or (3) in developing plans for—

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency, or agencies, for receipt of any grant made by the Secretary under this section.

(d) Any State agency, or agencies, designated by the Governor of the State, desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may be up to 90 per centum of the State's total cost. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 17 of this Act. The Federal share for each State grant under this subsection may be up to 50 per centum of the State's total cost. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.

(h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to Congress, describing the experience under the program and making any recommendations he may deem appropriate.

EFFECT ON OTHER LAWS

SEC. 22. (a) Nothing in this Act shall be construed or held to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of, employment.

(b) Nothing in section 5 of this Act shall apply to working conditions of employees with respect to whom any Federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

AUDITS

SEC. 23. (a) Each recipient of a grant under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

REPORTS

SEC. 24. Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of occupational safety and health, and any other relevant information, and including any recommendations to effectuate the purposes of this Act.

APPROPRIATIONS

SEC. 25. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

SEC. 26. This Act shall take effect on the first day of the first month which begins more than thirty days after the date of its enactment.

SEPARABILITY

SEC. 27. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

PURPOSE

The purpose of H.R. 16785 is to reduce the number and severity of work-related injuries and illnesses which in spite of current efforts continue at high levels, and which result in human misery and economic waste.

The bill would achieve its purposes by providing needed Federal-State cooperation and by developing and extending Federal support in the field of industrial safety and health. Aid is given specifically in the areas of research, education, training and regulation.

BACKGROUND

More and more nationwide activities are focusing on the "Environmental Crisis"—the pollution of air and water and the destruction of natural resources. Unfortunately, national attention given to environmental problems fails to give sufficient recognition to the pertinent question of occupational safety and health. Our environment is not solely the air we breathe traveling to and from work. It is also the air we breathe at work. The issue of the health and safety of the American working man and woman is the most crucial one in the whole environmental question, because it is out of the workplace that the problem of pollution arises, and over 80 million workers spend one-third of their day in that environment.

The on-the-job health and safety crisis is the worst problem confronting American workers, because each year as a result of their jobs over 14,500 workers die. In only four years time, as many people have died because of their employment as have been killed in almost a decade of American involvement in Vietnam. Over two million workers are disabled annually through job-related accidents.

The economic impact of occupational accidents and diseases is overwhelming. Over \$1.5 billion is wasted in lost wages, and the annual loss to the Gross National Product is over \$8 billion. Ten times as many man-days are lost from job-related disabilities as from strikes,

and days of lost productivity through accidents and illnesses are ten times greater than the loss from strikes.

The Committee recognizes the enormity of the problems of occupational safety and health, and its hearings disclosed that these problems seem to be getting worse, not better.

In 1966-67, the Surgeon General of the United States studied six metropolitan areas, examining 1,700 industrial plants which employed 142,000 workers. The study found that 65 percent of the people were potentially exposed to toxic materials or harmful physical agents, such as severe noise or vibration. The Surgeon General further examined controls that were in effect to protect workers from toxic agents and found that only 25 percent of the workers were adequately covered.

California, a state with vigorous occupational safety and health reporting procedures, showed 27,000 occupational diseases in 1964, a rate of 4.8 per 1,000 workers. Projected nationally, there were 336,000 estimated cases of occupational diseases that year, a figure which by all indications continues to grow. In support of this, the U.S. Public Health Service now shows 390,000 new cases of occupational diseases annually.

Studies of specific industries have also given clear warning of the magnitude of the problem. One study showed that about 3.5 million workers are exposed to some extent to asbestos fibers. In addition, another researcher gathered statistics on asbestos insulation workers for 20 years and found seven times more pulmonary cancer among this group than among the general population.

The chemical betanaphthylamine is so toxic that there is no safe limit of exposure to it. Any exposure at all is likely to result in the employee developing bladder cancer over a period of years. The Commonwealth of Pennsylvania discovered this extreme effect of betanaphthylamine and banned its use, manufacture, storage or handling in the state, but production of this lethal chemical has begun in another state where legislation is inadequate. The exposure of workers to betanaphthylamine continues today.

Clearly, the life of a worker in one state is as important as a worker's life in another state, and uniform standards must be required to protect all workers from dangerous substances. Despite this obvious need, state response has been minimal. Federal leadership and assistance are necessary to change this record of inaction.

It cannot be claimed that industry is too diverse for Government programs to be effective in lowering accident rates, when it is a fact that in the states with good occupational safety and health programs the accident rate is 19 per 100,000 workers, and in states with poor programs it is 110 per 100,000 workers—or over 500 percent higher.

However, the Committee recognizes the problem of comparing the health and safety records of one state with another. States with effective safety programs have as a part of their requirements comprehensive reporting of industrial accidents. While efforts have been made to standardize the form of accident and disease reporting, to date there is no uniform system. As a result, states with the least effective programs may appear to have a more favorable accident record. Accurate, uniform reporting standards are an evident Federal responsibility.

Citing technological progress as a mixed blessing in a message to Congress on August 6, 1969, President Nixon urged the passage of

a comprehensive occupational safety and health bill. The President stated:

The same new method or new product which improves our lives can also be the source of unpleasantness and pain. For man's capacity to innovate is not always matched by his ability to understand his innovations fully, to use them properly, or to protect himself against unforeseen consequences of the changes he creates.

The side effects of progress present special dangers in the workplaces of our country. For the working man and women, the by-products of change constitute an especially serious threat. Some efforts to protect the safety and health of the American worker have been made in the past both by private industry and by all levels of government. But new techniques have moved even faster to create newer dangers. Today we are asking our workers to perform far different tasks from those they performed five or fifteen or fifty years ago. It is only right that the protection we give them is also up to date.

COMMITTEE ACTION

The Select Subcommittee on Labor held 13 days of hearings in Washington, D.C. on September 24, 25, 30; October 9, 15, 16, 29, 30; November 5, 6, 12, 13, 18, 1969. Two hearings were held in San Francisco, California, on November 21 and 22, 1969. The bills considered were H.R. 843, H.R. 3809, H.R. 4294, and H.R. 13373.

Testimony was presented by the Honorable George P. Shultz, Secretary of Labor, and Dr. Roger O. Egeberg, Assistant Secretary of the Department of Health, Education, and Welfare for Health and Scientific Affairs. Numerous public witnesses also appeared.

On March 25, 1970, H.R. 16785, a clean bill, was reported by the Subcommittee after five Executive Sessions.

Following two days of consideration, the full Committee on Education and Labor reported this bill as amended to the House for approval.

MAJOR PROVISIONS

INTERIM STANDARDS

H.R. 16785 would require every employer as defined in the bill to comply with interim occupational safety and health standards promulgated by the Secretary of Labor under Section 6. Interim standards may be promulgated for a maximum period of two years from the effective date of this Act. They may be national consensus standards, established Federal standards in effect, or standards produced by a nationally-recognized organization by other than a consensus method. In the event of conflict among standards, the Secretary shall promulgate the one which assures the greatest protection of affected employees. Before standards are promulgated, a public hearing must be afforded to interested parties. Each interim standard shall stay in effect until superseded by a rule issued under Section 7, procedures for formal standard-setting. Ninety days after promulgating interim standards, the Secretary must begin procedures for setting permanent ones.

The intent of this Interim Standards provision is to give the Secretary of Labor a speedy mechanism to promulgate standards with which industry is familiar. These might not be as effective or as current as the permanent standards promulgated under formal procedures, but they will be useful for immediately providing a nationwide minimum level of health and safety.

Two private organizations are the major sources of consensus standards: the American National Standards Institute, Inc., and the National Fire Protection Association. The standards they produce are the only ones we have in many areas. These two groups together produce only about 13 percent of all safety standards but have done very little in the way of developing occupational health standards.

The Committee believes the Secretary should also be able to use proprietary standards for interim regulation. A considerable number of these are produced by various industries, professional societies and associations. Included are such well-known and respected groups as the American Conference of Governmental Industrial Hygienists, the Manufacturing Chemists Association, and the Associated General Contractors. Policy in this group is determined by a straight membership vote, not by consensus.

Although proprietary standards are voluntary, they have gained wide acceptance by American industry. Recognition of proprietary standards, as well as consensus standards, is significant because the Committee realizes that Federal legislation should not ignore experience gained in the private sector.

Section 6 states that Federal standards in effect on the date of enactment of this Act may be used as interim standards to cover additional employees who are not under the jurisdiction of another Federal safety law.

The Committee believes that business should be readily able to adapt itself to Federal standards since many voluntary industrial standards have been incorporated by reference into numerous Federal safety laws. Present Federal standards are applicable to at least 25 million workers.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section 7 provides that the Secretary may by rule, promulgate, modify, or revoke any occupational safety and health standard. The Secretary shall institute proceedings under this Section upon application in writing by an interested person, a representative of an organization of employers or employees, the Secretary of Health, Education and Welfare, or a state or a political subdivision of a state. The Secretary himself may determine that a rule should be prescribed in order to serve the objectives of the Act or if he is required to do so under Section 6.

When the Secretary intends to exercise the provisions of Section 7, he appoints a 15-man advisory committee which must submit recommendations to him within 9 months or such longer or shorter period as the Secretary may prescribe. But in no event may this period be any longer than one year and three months. After the submission of recommendations, the Secretary shall as soon as practicable, but not later than four months, schedule a hearing on the recommendations of the advisory committee and on any other relevant

issues. If the advisory committee should fail to submit recommendations, the Secretary shall publish his own proposals and then begin public hearings. All interested persons who have previously submitted comments may be heard at the proceedings.

Within sixty days after completing the hearings, the Secretary must promulgate a rule based upon the entire record before him. If he determines a rule should not be issued, he must also publish his reasons in the Federal Register. The rule issued may contain a provision which would delay its effective date for ninety days, so that affected employees and employers may familiarize themselves with the requirements.

The Committee feels it is vital that when the Secretary sets an occupational health standard he do so on the basis of the best available professional evidence; it is not intended that the Secretary be paralyzed by debate surrounding diverse medical opinions. The Secretary's occupational health standard should insure that no employees will suffer any impairment of health, functional capacity or diminished life expectancy from regular exposure to a hazard. It is the Committee's intent that religious rights of those who maintain their health solely by spiritual means shall be given consideration in any regulations promulgated. Whenever practicable, standards shall be expressed in terms of objective criteria and in terms of desired performance.

During the hearings, the Committee considered the degree to which it would rely upon the use of national consensus standards in the administration of an Occupational Safety and Health Act. It determined that these standards could not be given preferential treatment, since their credibility is suspect on two grounds: first, a private organization is susceptible to the pressures of commercial trade association interests, and second, consensus standard organizations have been slow in the development and updating of present safety standards.

Testimony presented to the Committee called attention to a report to the Secretary of Labor's Committee on Industrial Safety, written by Mr. David Swankin, former Director of the Labor Standards Bureau of the Wage and Labor Standards Administration. It revealed that over 60 percent of USASI safety standards were out of date and needed serious revision.

Voluntary standards set by the consensus method represent the lowest common denominator of change in the status quo that is necessary to achieve acceptance. Now that we have chosen the force of law to command acceptance of safety and health regulations, this method should not apply.

The Committee considered and unequivocally rejected any provision for a National Occupational Safety and Health Board to promulgate standards. Among the arguments supporting the concept of a Safety Board are these:

- (1) The Board would represent expertise in the field, and
- (2) The Board would represent a separation of power with respect to standards-setting and enforcement.

The Committee agrees that professional and technical information must precede the decision to establish a standard, but experts would be used in an advisory capacity with decision-making as part of the Secretary's authority. In this way, the focal point of responsibility is more easily identified.

Some arguments were made that the development of standards should be separated from their enforcement and that the Board accomplished this. Actually, the effect of a Board would be to divide up the administrative responsibility of the Act into such small parts that cohesive administration would be difficult if not impossible. Federal departments and regulatory agencies uniformly have both rulemaking and enforcement powers without abuse of any rights. The separation of powers concept is not so much whether the Secretary should be separated from the power to set standards, but whether he should be separated from the power to act effectively.

The Committee realizes that boards and commissions have been used in the past as a common technique to avoid making decisions, even where most of the information with which they deal has been readily available for direct Congressional action or administrative regulation.

A Board whose members are appointed to serve for fixed terms could not be held accountable to anyone for reasonable and consistent establishment of standards. Indeed, it would be far better to place the authority in the one appointee whose primary obligation is to protect the legitimate interests of the workers and to enforce public policy in these areas as given to him by Congress and the President.

For an even greater assurance of prompt decision-making in setting safety and health standards, a time frame has been placed into this Act which will guarantee that procedures for developing criteria and promulgating regulations will proceed swiftly. The intent of specific time periods is not to suggest the necessary length of these proceedings, but to indicate that they should be completed as soon as possible, but not longer than the prescribed periods.

Section 7(b) provides that any affected employer may apply to the Secretary for a rule or order for an exemption from standards set pursuant to clause (2) of Section 5. Affected employees must be notified of the hearing. To receive an exemption the proponent must demonstrate by a preponderance of evidence that he will provide to his employees employment and places of employment which are as safe and healthful as those which would prevail if he complied with the standard.

There are many dangerous areas of contamination to workers which are under constant study. Current health research is aimed at problems we know or believe to exist. Criteria in these areas are needed as fast as they can be developed. To gain this end, research efforts are in progress, supported by the National Institutes of Health and other agencies in the Department of Health, Education, and Welfare, which deal with environmental contaminants both in the workplace and outside it.

However, workers are in daily contact with literally hundreds of new chemicals and formulations about which little is known. As occupational health research becomes more sophisticated, there is every indication that the toxicity of the fumes, gases and chemicals to which workers are exposed will be discovered by researchers.

Because of the obvious need for quick response to new health and safety findings, Section 7(c)(1) mandates the Secretary to promulgate temporary emergency standards if he finds that (A) employees are in grave danger from exposure to substances determined to be toxic or

to new hazards, and that (B) such emergency standard is necessary to protect employees from this grave danger. Upon publication of the standard in the Federal Register the Secretary shall begin a hearing in accordance with Sections 556 and 557 of the Administrative Procedure Act. The standard shall be effective for a period not to exceed six months, but shall continue in effect beyond the six months until the determination of the administrative hearing.

The Committee feels it is critical that there be full public disclosures under this Act. Whenever the Secretary promulgates any standard, makes any rule, order, decision, grants any exemption of time, or compromises, mitigates or settles any penalty, or determines not to make such a decision, he shall include a statement of the reasons for his actions which shall be published in the Federal Register.

ADVISORY COMMITTEES

Two kinds of advisory committees are established. Most important is the ad hoc advisory committee appointed by the Secretary to assist in the development of each standard.

Section 8(b) provides that each advisory committee shall consist of not more than fifteen members and *shall* include one or more designees of the Secretary of Health, Education, and Welfare, an equal number of persons qualified by experience and affiliation to present the employers' and employees' views, as well as one or more representatives of professional organizations specializing in occupational safety and health, including licensed health-care practitioners, and one or more representatives from nationally recognized consensus organizations. In order to insure a balanced view between governmental and non-governmental members and to preserve the guarantee of a public interest orientation, the number of persons appointed to any advisory committee shall not exceed the number of representatives of Federal and state agencies who are appointed.

All meetings of the committee are open to the public and an accurate record is to be kept and made available to the public. This is to insure a full exchange between members of the advisory committee, to preserve a record of what they do, and to avoid undue secrecy on vital matters. No member of the committee other than representatives of employers and employees shall have an economic interest in any proposed rule so that members will be free from economic or psychological coercion in their decision-making.

Standards ought to be judged objectively as to whether they do, in fact, give maximum and reasonable protection to the health and safety of workers. Industry wants to be assured that it will be heard and its technical input properly evaluated. Other interested persons also wish to make effective presentations. Public hearings before the technical advisory committees will better accomplish this since the openness of meetings imposes an extra duty of preparation and rebuttal.

In addition to the ad hoc advisory committees, the Secretary and the Secretary of Health, Education, and Welfare shall appoint without regard to the Civil Service laws a National Advisory Committee of 20 members divided between representatives of management, labor and occupational safety and occupational health professions. The Secretary shall appoint all members to the committee except for the

occupational health representatives who are to be appointed by the Secretary of Health, Education, and Welfare. The Advisory Committee has an important role to perform in bringing continuing public attention and interest to bear on the Act and on the Secretary's program. Its membership should be chosen with great care and be widely representative.

GENERAL DUTY

Under principles of common law, individuals are obliged to refrain from actions which cause harm to others. Courts often refer to this as a general duty to others. Statutes usually increase but sometimes modify this duty. The Committee believes that employers are equally bound by this general and common duty to bring no adverse effects to the life and health of their employees throughout the course of their employment. Employers have primary control of the work environment and should insure that it is safe and healthful. Section 5(b) merely restates that each employer shall furnish this degree of care. There is a long-established statutory precedent in both Federal and state law to require employers to provide a safe and healthful place of employment. Over 36 states have these provisions, and at least four Federal laws contain similar clauses, including the Walsh-Healey Public Contracts Act, the Service Contract Act, the Longshoremen's and Harbor Workers' Act, and the Federal Employers' Liability Act.

An employer's duty under Section 5(b) is not an absolute one. It is the Committee's intent that an employer exercise care to furnish a safe and healthful place to work and to provide safe tools and equipment. This is not a vague duty, but is protection of the worker from preventable dangers.

Governor Howard Pyle, President of the National Safety Council, testified before the Select Subcommittee on Labor on November 5, 1969, in strong support of such a "general obligation" clause:

If national policy finally declares that all employees are entitled to safe and healthful working conditions, then all employers would be obligated to provide a safe and healthful workplace rather than only complying with a set of promulgated standards. The absence of such a "general obligation" provision would mean the absence of authority to cope with a hazardous condition which is obvious and admitted by all concerned for which no standard has been promulgated.

There is no Constitutional impediment to a general duty provision.

The authority granted by this provision is no more far reaching than that granted by other Federal statutes. Indeed, in other Federal safety acts, the Congress has delegated comparable authority to Federal administrative officials, while in this provision the Congress is acting directly.

Violations of the bill's general duty clause do not subject the employer to mandatory penalties. Whereas, uncorrected serious violations of standards bring mandatory civil penalties under Section 15(a), uncorrected violations of the general duty clause do not bring automatic penalties under Section 15(b).

Bearing in mind the fact that there is no automatic penalty for violation of the general duty, this clause enables the Federal Govern-

ment to provide for the protection of employees who are working under such *uniquet* circumstances that no standard has yet been enacted to cover this situation.

The general obligation clause is necessary in order to encourage compliance with the Congressional intent set forth in Section 2(b), "To assure as far as possible every working man and woman in the nation safe and healthful working conditions."

INSPECTIONS AND INVESTIGATIONS

To implement a national occupational safety and health program, it is necessary for Federal and state personnel to have the right of entry in order to appraise any safety or health hazard. Thus, Section 9(a) authorizes the Secretary, upon presenting appropriate credentials, to enter at reasonable times the premises of any workplace where work is performed to which this Act applies, and to inspect and investigate within reasonable limits all pertinent conditions and also to question owners, operators, agents or employees.

The Committee is aware of widespread concern that under present safety and health legislation, the results of a Federal or state inspection are never revealed to the workers and that much potential benefit from an inspection is never realized. If an inspector determines that a danger to health and safety exists, he should be able to advise a worker's representative or be able to question workers, who ought to be permitted to disclose their concern with an alleged dangerous work area.

Correspondingly, an employer should be entitled to accompany an inspector on his tour. The employer's presence should be helpful to the inspector and educational to the employer. For these reasons, H.R. 16785 provides that a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany any person who is making an inspection of any workplace under subsection 9(a).

Although questions may arise as to who would be considered a duly authorized representative of employees, the Committee expects the Secretary of Labor to determine this question by promulgating regulations to act as guidelines for an inspector.

Since the Federal Government is moving for the first time into an area of broad national responsibility, corresponding authority must be delegated to the Secretary in order that he may carry out this responsibility. The Committee intends that the Secretary should initially use this authority in those industries or occupations where the need for safeguarding worker safety and health appears to be the greatest. In addition, Section 9(b) grants the Secretary of Labor a subpoena power of books, records and witnesses—a power which is customary and necessary for the proper administration and regulation of an occupational safety and health statute.

Protecting the safety and health of workers certainly will be the Secretary's primary responsibility under this bill, but the Committee wishes to emphasize a strong caveat to the Secretary that illusory safety or health issues should never be used as an excuse to intervene in a labor-management dispute.

CITATIONS FOR VIOLATIONS

Section 10 provides that if the Secretary after an inspection determines that an employer has violated certain provisions of the Act, he shall issue a citation.

Section 10 is closely related to Section 15, the Penalties provision. The issuance of a 10(a) citation may bring about a 15(a) mandatory penalty, while the issuance of a 10(b) citation may bring about a 15(b) discretionary penalty. A 10(c) violation is not subject to a penalty. The Committee desired to categorize types of violations and to attach mandatory and discretionary penalties to each type according to the degree of culpability.

Section 10(a) provides that if the Secretary after an inspection determines that an employer has violated an occupational safety and health standard or an interim standard, an exemption order or a reporting requirement, and that a serious danger exists by reason of such violation, he shall issue a 10(a) citation.

Section 10(b) provides that if the Secretary after an inspection determines that an employer has violated the duty to provide a safe and healthful workplace, and a serious danger exists, or that there is a violation of a reporting requirement under Section 9(c) and no serious danger exists, the Secretary is required to issue a 10(b) citation.

The philosophy underlying H.R. 16785 is not based on the assumption that American industry can be made safe and healthful by simply enacting a Federal law which emphasizes penalties, because even large ones can become mere license fees. Therefore, the Committee believed there was an inherent need for a 10(c) violation, which serves to warn as well as educate both the employer and his workers. In effect, Section 10(c) recognizes that specific violations, even of objective standards based on performance, can be more technical than real. So, it states that if an employer has either violated the duty to maintain a safe and healthful workplace or an occupational safety and health standard, and no serious danger will result, a civil or criminal penalty shall not be levied.

Each citation must be in writing and must describe the nature of the violation. In cases where a citation is issued under section 10 (a) or (b) for a violation which might cause cumulative or latent ill effects, this citation shall specify, where feasible, a period during which employers must accurately measure the exposure of their employees to such danger.

Death and disability prevention is the primary intent of this bill. Although possible penalties for violations may be an important deterrent, they are only a partial solution. If we are to reduce disabilities and fatalities, it is essential that we guarantee adequate warning of possible hazards. For this reason, the Committee provides for the prominent posting of a citation at or near the place of violation in accordance with regulations made under 9(c).

Section 10(f) defines serious danger as a substantial probability that at any time death or serious physical harm could result from a condition which exists in a place of employment.

The words, "at any time," recognize the nature of occupational health problems as different from that of occupational safety. Safety hazards are often immediately apparent, and resulting accidents usually show a clear cause and effect. Diseases resulting from occupa-

tional health hazards may not become known until years of continuous exposure have elapsed. This is certainly true in industries with a high risk of dust diseases of the lungs, such as silicosis from coal mining, asbestosis from construction work, and byssinosis from textile production. Since there is a long latent period between dust exposure and most diseases resulting from such exposure, standards which are enforced by the Secretary today will be of great benefit to workers 20 years from now. In two decades it is likely that an employee will be working in similar employment but for another employer. Therefore, uniform national standards must be promulgated and enforced to assure equal protection to both workers and employers. Otherwise, an employer investing in current occupational health precautions would receive no future benefits, not even in the reduction of workmen's compensation costs. He might be paying for the past neglect of another employer. Uniform enforcement will also reduce or eliminate the disadvantage that a conscientious employer might experience where inter-industry or intra-industry competition is present.

PROCEDURES FOR ENFORCEMENT

After a citation is issued by the Secretary for a 10 (a) or (b) violation, he must notify the employer of the proposed assessed penalty, if any, within ten working days of the inspection or investigation. Otherwise, the citation is deemed void. The employer then has 15 working days during which he must notify the Secretary whether or not he wishes to contest the citation or proposed assessment. If the employer fails to notify the Secretary that he intends to contest, the citation or penalty would become final and would not be subject to review. For purposes of enforcement they would be considered orders issued by the Secretary under Section 11 (b). However, employers will not be deemed to have violated the Section 5 (1) duty if they are in compliance with an applicable standard or a state plan which is in effect.

If an employer decides to contest a citation or penalty, or if the Secretary believes an employer has not corrected a violation within the prescribed period, the Secretary will afford an opportunity for a hearing governed by the Administrative Procedure Act. Based upon the hearing record, the Secretary shall issue an order confirming, denying or modifying the citation or penalty, or issue an order for the correction of the violation for which the citation was issued and for the assessment and collection of any penalty.

In those proceedings, the Secretary is to adjudicate, among other things, the validity of the standard, rule, order, or regulation alleged to have been violated and the reasonableness of the time permitted for the correction of the violation.

Upon issuance of an order under 11 (b), the Secretary has the power to petition the U.S. District Court to enforce any order of the Secretary issued under 11 (a). Except in the case of an order which became final under 11 (a), any person aggrieved by an order of the Secretary under 11 (b) may obtain judicial review by the U.S. District Court by filing for review within 30 days of the issuance of the order.

PROCEDURES TO COUNTERACT IMMINENT DANGER

According to H.R. 16785, the Secretary has the authority to issue immediate cease and desist orders when there is real and immediate danger. The time consumed in unnecessary legal steps may be the difference between life and death. In most cases, employers will recognize the gravity of the danger and will voluntarily close down a machine or a process. Where this is not done, it is imperative that the **Secretary retain this important authority.**

The Committee believes that the causes of safety and the public interest would best be served by allowing immediate remedies for extremely serious situations. The Committee was also aware of the very critical issue involved in closing a plant or shutting down an operation. The testimony of New York State Industrial Commissioner M. P. Catherwood was very persuasive on this point:

In emergency situations the Secretary should be able to take effective action at least for a limited period pending opportunity for appeal or for adoption of some other approach.

In New York the Department of Labor has the power to "tag" dangerous machinery, equipment and areas. This power is used sparingly but significantly. A person who is affected by such "tagging" has the right of review before the Board of Standards and Appeals within 72 hours.

Modeled after the principles of the New York State health and safety code, Section 12(a) states that the Secretary may issue an order prohibiting employment in a place where an imminent danger exists for not more than 5 days from the date of issuance.

Section 12(b) provides that if the Secretary determines that an imminent danger exists, he may bring a civil action in the U.S. District Court to obtain a temporary restraining order or injunction prohibiting the employment or the presence of individuals where the imminent danger exists. An action may be brought under this subsection while an order of the Secretary under subsection (a) is in effect. A court order under this section becomes ineffective if it is determined by other provisions of the Act that no violation exists.

For the purposes of this section, an imminent danger shall be said to exist in a workplace if such danger could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated. This section is intended to include the restraining of a specific industrial operation in which lethal substances or conditions are present and exposure to these will cause irreversible harm, even though the resulting physical disability may not manifest itself at once.

In addition to the opportunity for judicial review of the Secretary's enforcement orders, an important form of relief is given in Section 12(c). If the Secretary arbitrarily issues or fails to issue an order, any person who is damaged by his action can bring suit in the U.S. Court of Claims for recovery of damages, reasonable costs and attorneys' fees.

The Committee advises that the word "person" under 12(c) should be broadly construed. Employers, employees, employers' customers and other non-employees injured as a result of the Secretary's action

or failure to act under Section 12(a) should have recourse in the U.S. Court of Claims.

PENALTIES

A national occupational safety and health program raises the valid question of how great an emphasis shall be placed on seeking out employers who do not follow safe practices and on quickly enforcing the law against them. No matter what priority is given to voluntary compliance, companies which operate in a reckless manner should be dealt with firmly and effectively so that this cause of industrial injury can be eliminated.

American industry cannot be made safe and healthful solely by enacting a Federal law which emphasizes punishment. Nevertheless, this measure recognizes that effective enforcement and sanctions are **necessary for serious cases.**

Any employer who receives a citation under 10(a), or fails to correct a violation of a 10(a) citation, or violates an order issued under 12(a), shall be subject to a mandatory penalty, which is to be assessed by the Secretary. The secretary's action is subject to a full hearing under the Administrative Procedure Act.

Any employer who receives a citation under 10(b) or fails to correct a violation for which such a citation is issued within a prescribed time, may be subject to a penalty at the discretion of the Secretary.

Each violation shall subject the offender to a possible civil fine of \$1,000, and each constitutes a separate offense. When the violation is of a continuing nature, each day it continues after a reasonable limit, specified in an initial decision following a hearing, shall constitute a separate offense, except during the time a review of the order may be taken, or such review is pending, and during the time allowed in the order for correction.

H.R. 16785 does not contain any criminal penalties for violations of standards. Yet, an employer who willfully violates any promulgated standard becomes subject to a possible \$10,000 fine for each violation.

Except in the case of willful violations, by not attaching a penalty to 10(c) violations the Committee is reaffirming its belief that if employers are warned of potential danger, they will remedy a deterioration in working conditions.

Other than willful violations, the violator's intent should not be a pertinent factor in the original assessment of penalties where there is a failure to comply with standards and regulations. In mitigating penalties, however, other circumstances are germane. The employer's good faith and his past record, which may include 10(c) violations, should be considered, as well as the appropriateness of the fine in relation to the size of the business and to the gravity of the violation.

Criminal penalties are levied in certain instances. Anyone who forcibly resists a person in the performance of his duties is subject to a \$5,000 fine or imprisonment of not more than three years or both. The use of a dangerous weapon or murder of a person in the performance of his duties subjects one to felony charges.

Essential to the effective enforcement of this Act is the premise that employers will not be forewarned of inspections of their plants. Experience under the Walsh-Healey Act has indicated that the practice of advance notice to an employer has been a prime cause of

the breakdown in that statute's enforcement provisions. Therefore, Section 15(e) provides a criminal penalty of \$1,000 fine or one year's imprisonment or both for advance notice of any inspection. Notice will be given when the Secretary and the Secretary of Health, Education and Welfare conduct necessary investigations or make visits to disseminate information relating to health and safety conditions.

Experience also has shown that workers are quite reluctant to report Walsh-Healey violations because of the fear that they will lose their jobs. This leads to speculation on how many actual violations are never reported. To protect those who exercise their rights under this Act, Section 15(f) provides that any person who discriminates against any employee because of an action that employee has taken on behalf of himself or others to secure the protection afforded by the Act, is subject to one year's imprisonment or \$1,000 fine or both.

RESEARCH AND RELATED ACTIVITIES

The House hearings illustrated for the first time both the wide scope of occupational safety and health problems and the small allocation of Federal, state and local research resources to find solutions to these problems. Many states have no ongoing research programs, and many other states have merely made a token effort.

As a result, much of the conclusive research has come from nongovernmental associations whose memberships are often composed of employees of private businesses which have donated time and money to this work. They have earned the gratitude of working men and women and have an important future role to play.

Many safety and health recommendations incorporate new insights based on research. These recommendations, if implemented, may require changes that cost substantial sums of money. This fact alone creates a potential conflict of interest between management and labor.

In view of this, it is expected that wherever the Secretary enters into contracts with nongovernmental organizations and institutions for the purpose of conducting research he should take advance precautions to determine that said organization or institution is, wherever possible, wholly free from any real or potential conflict of interest.

The public interest orientation of governmental research efforts should be aided by the statutory definitions of both Secretaries' responsibilities. This should also help to assure freedom from even a **theoretical conflict of responsibilities**.

To implement these goals, Section 19(a) (1), (2), (3), and (5) delegates specific authority to the Department of Health, Education, and Welfare to undertake the necessary research in this area. This Section of the bill also mandates the Secretary of Health, Education, and Welfare to develop the criteria which the Secretary of Labor needs to formulate standards. The Committee recognizes the need to have these criteria developed as rapidly as possible and has required the Secretary of Health, Education, and Welfare to publish these criteria **at least annually**.

To eliminate administrative confusion, the Committee felt it should define what is meant by the term "criteria" as used in the Act.

Criteria are scientifically determined conclusions based on the best available medical evidence; they are commonly presented in

the form of recommendations describing medically acceptable tolerance levels of exposure to harmful substances or conditions over a period of time. They may also include medical judgments on methods and devices used to control exposure or its effects.

Standards, on the other hand, will be developed by the Secretary of Labor and while they will reflect the criteria described above, they may be modified by practical considerations such as feasibility, means of implementation and the like. They will specify the conditions that will be required to be present in the working place.

The criteria developed by the Secretary of Health, Education and Welfare should be as useful and specific as possible. To this end, they should make explicit all of their accompanying assumptions, particularly those which relate to the duration of time of worker exposure. Any recommended criteria should presume that workers will be exposed to these hazards for the entire period of their work experience—a period which may be only a few years for a deep sea diver, or up to 47 years for a teenager who may be under a hazard until he is 65 years old. In developing criteria, the Secretary should not assume, regardless of existing practice, that any employee will move from an exposure after a given period of time. The criteria then retain their integrity as purely medical conclusions, free from practical considerations, which, when translated into effective standards, will prevent diminished life expectancy or the loss of health even if maximum exposure occurs.

In promulgating standards, the Secretary of Labor may prescribe specific conditions under which such standards may be temporarily exceeded. Such conditions would be based upon actions of employers which limited possible exposure of workers, and should require a showing, for example, that a worker must change exposures and jobs at specified times and that this will obviate the proscribed dangers of **loss of health or life expectancy.**

Since the definitions of "health" and "life expectancy" will be applied to new workplaces and new dangers, the committee expects that the Secretary of Health, Education and Welfare will develop adequate enough information to assure, to the greatest extent possible, that his criteria will allow wise anticipatory investments by businessmen to obviate workplace dangers. Thus the initial criteria should be construed broadly enough to encompass such impairments as loss of functional capacity, hearing, or any illness which the Department of Health, Education, and Welfare believes will result from this work experience.

Section 19, subsection (a)(4) directs the Secretary of Labor and the Secretary of Health, Education, and Welfare to "develop procedures" to assure that dangerous working conditions are measured by employers. Four separate circumstances are described in paragraphs (A), (B), (C), (D) under which monitoring requirements are limited to showing degrees of need, based on the circumstances involved. This section recognizes that the potential manpower required to send inspectors into plants on a case-by-case basis would effectively defeat the goal of accurate data on possible dangers. Moreover, if the Secretary of Labor or the Secretary of Health, Education, and Welfare were to rely exclusively on measurements taken with his own instruments, implementation of this section would be subject to delay, inattention and lapsed funding. Thus, the employer's effective control of the

situs and means of production should include the requirement to measure that environment when there is a demonstration that it can or will produce damage to workers.

Section 19, subsection (a)(5), is a response to the many problems caused by the continued presence and use of carcinogenic and toxic substances and processes in the workplace. Evidence from state inspections and disease statistics, from unions and from Federal witnesses has substantiated the uncontrolled existence of these dangers. In addition, the hearings gathered testimony which showed that over 600 new substances are introduced into the work environment every year with no assurances of their safety. Today's laws and practices allow workers to receive thousands of cases of occupational disease and illness without any effective protection.

Basically, the worker needs to have adequate advance knowledge of hazards in order to protect himself from damaging exposures. He needs proper protective equipment and the information necessary to treat emergencies if they arise. He should not be economically coerced into a hazardous job. Since inadvertant exposure to unknown products or processes often causes severe and immediate reactions, the exposed worker must know what type of exposure he has suffered in order to use proper treatment. The worker especially needs this information in cases of toxic substances which have delayed or latent ill effects.

For all of these problems, any remedy must be relatively self-enforcing in order to apply equally to the hundreds of thousands of affected workplaces. To provide for a few of these situations, subsection (a)(5) requires that the Secretary of Health, Education and Welfare must give information about known substances with toxic or potentially toxic effects to employees. Since human susceptibility to toxic substances is known to vary, the phrase "potentially toxic" is used to assure coverage when evidence is not completely conclusive and to protect more than the most resistant workers. This subsection also provides that certain information about these toxic substances should be provided to exposed workers by means of "label or other appropriate means" together with necessary protective devices. If the protective equipment should fail, the worker or hospital can take appropriate corrective action and should eliminate "unknown poisoning." This labeling requirement should help alleviate the inability, testified to by some workers, to take the necessary corrective action immediately.

Subsection (a)(5) also recognizes that some of the 600 new substances per year may not manifest their danger to employees until it is too late. The range of remedial actions is wide but not promising. A requirement for the proof of the safety of such substances before their introduction into the workplace would be desirable if it could be achieved without undue burdens on commerce from initial delays in obtaining approval, or if it could be implemented selectively. This still provides inadequate protection, since early testing might not anticipate the many combinations of substances and environments which often create the most dangerous exposures. Mandatory pre-clearance of substances while applicable in the field of drug marketing, may offer more promise than performance. Alternatively, exclusive reliance on site-by-site Federal inspection of three million workplaces for correction would also be imperfect.

Because any workable solution to covering new substances would have to be fast-acting and self-enforcing, the Committee adopted a

two-step process whereby workers or employers could submit unknown substances to the Department of Health, Education and Welfare for a determination of their toxicity. Only after the Department of Health, Education and Welfare made a determination that a substance was toxic would employees have a right to information about these substances, a right to necessary protective equipment, if any. To assure these rights, the bill guarantees that employees may not be forced to work without these safeguards. There is still a real danger that an employee may be economically coerced into self-exposure in order to earn his livelihood, so the bill allows an employee to absent himself from that specific danger for the period of its duration without loss of pay. However, the Committee intends that the danger cannot be deliberately caused by the employee. The Department of Labor will implement this intent. Nothing herein restricts the right of the employer, except as he is obligated under other agreements, to assign a worker to other nonprohibited work during this time. This should eliminate possible abuse by allowing the employer to avoid payment for work not performed.

REPORTS AND REPORTING

Adequate information is the precondition for responsive administration of practically all sections of this bill. However, at the present time, the Federal Government and most of the states have inadequate information on the incidence, nature, or causes of occupational injuries and deaths. For diseases, the information gap is even larger. Thus, the first action of both the Federal and State Governments should be to remedy these gaps with the institution of adequate statistical programs. The long-standing charade of the Z 16 standard is specifically recognized and rejected by the language of the Committee bill which requires that all deaths, injuries and ailments should be recorded at least once.

To assure the completeness of data, Section 9(c) directs the Secretary of Labor to cooperate with the Secretary of Health, Education and Welfare in developing regulations which implement this goal. The Committee recognizes the fact that some work-related injuries or ailments may involve only a minimal loss of work time or perhaps none at all, thus these might not be of enough value to the Governmental bodies to require record-keeping thereof. However, the Committee was not offered any statutory language which was not subject to the greater peril of allowing under-reporting. The Committee therefore intends that the language of "all work-related injuries, diseases and ailments" should be treated as a minimum floor which includes such conditions as work-related loss of consciousness, treatment by a physician even if the treatment occurs only once and subsequent legation is by a nurse or medical technician, and records of diseases which are derived from work exposure, such as asbestos and silicosis and which may not be known to an employee until after an employee retires and applies for medical benefits under his retirement plan. These latter records may be available or known only to state officials and not to the employer, and thus the employee would have no such record-keeping responsibility; however, in such case, the Committee expects that the Secretary of Labor and the Secretary of Health, Education and Welfare will develop other means by which the Government can carry out their general responsibility to report the incidence of these problems accurately.

At the same time, the Committee recognizes the need to assure employers that they will not be subject to unnecessary or duplicative record-keeping requests and has specifically stated this intent in Section 9(d). To that end, the Committee intends that wherever possible, reporting requirements should be satisfied by having an employer report relevant data only to one Governmental agency and that other Governmental agencies, if any, should then acquire their information from the original agency.

The Committee also intends that the annual reports of both the Department of Labor and the Department of Health, Education and Welfare should contain comprehensive presentations of all this data, together with an analysis thereof so that this Committee and others in Congress may review the adequacy of progress and the possible need for further legislation.

TRAINING AND EMPLOYEE EDUCATION

The Committee judges that one of the key contributions Government can make to the occupational safety movement is through education by the dissemination of safety information and by the training of employers and employees.

The primary goal of any safety act is to prevent accidents and illnesses. Yet, if an effective law is enacted, it will fail to achieve this goal unless proper resources for safety training and education are appropriated.

Both Federal and state safety and health inspectors are severely inadequate in number. There are only 1,600 state safety inspectors and fewer than 100 Federal inspectors. Some states purport to cover all or most wage-earning workers under their rule-making, but have few inspectors to enforce the codes. Only three states have over 100 inspectors; about half have fewer than 25 inspectors; 16 have a dozen or less; four states have no inspection personnel whatsoever. Only three states have inspectors who are trained in the field of occupational health and hygiene. Ironically, there are twice as many fish and game wardens in the United States as there are safety and health inspectors. The hearings revealed a dearth of occupational health experts in this country.

The Committee recognizes that a substantial increase in manpower with professional competence is needed to bring about a successful program. To remedy this situation, certain provisions in the bill are designed to expand significantly the number of properly trained personnel to work in the field of occupational safety and health. Section 20 authorizes the Secretary of Health, Education and Welfare, after consultation with the Secretary of Labor, to conduct education and preparation of safety and health personnel.

In order to promote a greater awareness of safety in the workplace, the bill also provides for employee training to be conducted by the Secretary of Labor. Special emphasis is to be placed on technical assistance to both labor and management for the adoption of sound safety and health practices.

The Secretary of Labor, working with the Civil Service Commission, will continue to establish qualifications for Federal occupational safety personnel which have a meaningful relationship to any standards promulgated under this Act. It is absolutely essential that all who are carrying out duties under this Act will be fully qualified to do so.

FEDERAL-STATE RELATIONS

As a substantial number of Federal standards are adopted over a period of time, states will have an opportunity to demonstrate that their legislation and administration meet certain criteria, and that their plan is at least as effective in assuring safe and healthful conditions as the Federal standards promulgated under Sections 6 and 7 of this Act.

Whenever a state wishes to assume responsibility for developing and enforcing standards in an area where the Secretary has issued a standard, the state may submit a plan to him. It must contain assurances that the state will develop and enforce a standard at least as effective as that developed by the Secretary, that the state will have the legal authority, the personnel and the funds necessary to do the job, and that the right of entry into workplaces subject to the Act is provided. The plan must contain additional assurances that the state agency will report accidents and injuries to the Secretary in the same form and to the same extent as if the plan were not in effect.

On the basis of reports submitted by the state agencies, the Secretary shall, after an opportunity for a hearing, withdraw his approval if he finds that in actual operation there has been a failure to comply substantially with the plan or with the assurances stated in it. If the state plan ceases to be in effect, the Secretary may reassert his full authority under the Act. H. R. 16785, in addition to providing a hearing before the Secretary can reject a plan, assures judicial review of the Secretary's action. It should be noted that a state's program need not be all-encompassing; it may restrict itself to a particular hazard or industry. However, any industries or hazards not covered by the plan will continue to be under Federal jurisdiction.

The Committee calls attention to the requirement making standards promulgated under the plan applicable to all employees of public agencies of the state and its political subdivisions. This provision was endorsed by countless witnesses including the National Safety Council. Emphasizing that state and local governments be covered by this Act, this group stated:

As a matter of principle, the National Safety Council believes that the occupational safety and health programs under consideration should be applicable to all employees involved in interstate commerce and to all employees of Federal, state or local governments or agencies, excluding only the working conditions of employees covered by other Federal agencies having jurisdiction.

If a state presents such a plan and it is in full compliance with the requirements of this section, the Secretary shall approve the plan. His standard-setting and enforcement authority is converted in that state to the extent that the plan covers the field. The Secretary's authority still exists to the extent that the plan is silent about other occupational safety and health issues and to the extent that the Secretary has acted. The Secretary retains the right to inspect workplaces subject to approved state plans, but only in pursuance of his obligation to maintain a continuing evaluation of the manner in which each plan is operating.

As an encouragement for state action, the bill provides Federal financial support to assist those in assuming their own program for

worker safety. Planning grants with up to 90 percent Federal participation, and program grants with up to 50 percent Federal participation are provided.

The 90 percent grant is designed to induce the states in identifying needs, developing state plans and programs for collecting statistical data, increasing personnel capabilities and improving administration and enforcement.

The Secretary may also authorize grants to assist states in administering and enforcing programs for occupational safety and health contained in their plans. The Federal share may be up to 50 percent of the total costs. In the event that the Federal share for all states is not the same, the difference among the states is to be determined on the basis of objective criteria.

The three-year concept of these grants is designed with the belief that in the next few years practically all states will need Federal financial assistance to provide quality programs of occupational safety and health.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

H.R. 16785 contains coverage for approximately three million employees of the Federal Government. Section 18 requires Federal agencies to promulgate safety and health standards consistent with those developed by the Secretary of Labor for private industry. This Section also amends Section 7902(c)(1) of Title 5, U.S. Code, to permit labor organizations to serve on the President's Federal Safety Council.

During the past 25 years, there has been considerable improvement in the safety record of the Federal Government, but if it is to serve as a model employer, there must be a continuous effort to achieve the ideal. Less than a substantial yearly reduction in injuries and illnesses would not be satisfactory.

In February 1965, President Johnson launched the Mission Safety-70 in an effort to dramatically reduce injuries among Federal employees. The plan envisioned a 30 percent reduction in the frequency rate of disabling injuries during the life of the program. Four years have elapsed since the plan was initiated. Today the Government has progressed only eight percent toward the goal. Clearly, there is a margin of improvement yet to be achieved.

In order to create a more effective safety program, the bill directs each Federal agency to purchase and maintain safety devices and to require their use. Agencies must also keep adequate records and make an annual report on occupational accidents and injuries to the Secretary.

The above requirements will clearly establish primary responsibility for the Federal Government's internal safety effort by giving it a more active role in coordinating the multiplicity of safety programs devised by various agencies. Congress also will be offered an opportunity to learn of current health and safety conditions through annual reports.

COVERAGE, APPLICABILITY, AND RELATIONS WITH STATE LAWS AND OTHER FEDERAL STATUTES AND AGENCIES

This bill applies to all employment performed in interstate commerce at a workplace in a state, Wake Island, the Outer Continental

Shall lands Johnston Island and the Canal Zone. A state is deemed to be a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territories of the Pacific.

Nothing in the bill should be construed as repealing or modifying in any way other Federal laws prescribing safety and health requirements. In addition, nothing is intended to affect state or Federal workmen's compensation laws, or the rights, duties, or liabilities of employers and employees under them.

The Committee does not wish the Secretary of Labor to assert his statutory authority under this bill where another agency or department is actually exercising its authority. Section 22(b) expressly states that nothing in Section 5 of this Act shall apply to the working conditions of employees where any Federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

To further reduce duplication of coverage between this bill and other Federal laws, the safety and health standards promulgated under the Walsh-Healey Public Contracts Act, the Service Contract Act, the Construction Safety Act and the National Foundation on Arts and Humanities Act are deemed replaced by standards promulgated under H. R. 16785, which are determined by the Secretary to be corresponding standards. The Committee intends that "corresponding standards" implies that these standards will be at least as effective as those replaced.

It is the intent of the Committee that the Secretary will develop health and safety standards for construction workers covered by Public Law 91-554 pursuant to the provisions of that law and that the Secretary will utilize the same mechanisms and resources for the development and enforcement of health and safety objectives for construction workers newly covered by this Act. The use of the term "corresponding" in Section 416(2) is not intended to affect any reduction in the health and safety afforded construction workers.

Although the Committee has taken care to avoid probable areas of duplication, some questions may arise after enactment. Thus, within three years after the effective date of this Act, the Secretary must report to Congress his recommendations to achieve coordination between this Act and other Federal laws.

APPROPRIATIONS AUTHORIZED

There are authorized to be appropriated to carry out this Act such sums as the Congress shall deem necessary for each Fiscal Year.

While the Administration has given no indication of the cost of a comprehensive occupational safety and health program, obviously a large sum will be required to recruit, train and maintain the many individuals needed for the administration and enforcement of this law. It has been estimated that one-half of one percent of the projected loss from occupational accidents over the next three years would be about \$118 million. No less an appropriation for the same time period would be reasonable.

It will take substantial sums of money to produce a concerted effort to improve health and safety. A diluted effort may be worse than no effort at all, since expectations without fulfillment may not evoke the voluntary compliance which is necessary to the success of the program.

Therefore, if Congress gives its consent to this legislation, it is hoped that adequate funding will be authorized to achieve maximum benefits from all aspects of this bill.

CONCLUSION

If you have taken one hour to read and study this report, in that time at least eight workers will have been killed and approximately 1,100 workers will have been disabled by job-related injuries.

Without this legislation, we are faced with the dim prospect that three out of every four teenagers now entering the work force will sustain a disabling injury during their working career.

Must we always have mass disasters to pass safety legislation? Even the price of one life is too expensive when a meaningful occupational safety and health law could save many lives.

Is the price of progress the death of 14,500 workers annually?

Is the price of an expanding economy 2.2 million disabled workers each year?

As a nation, we simply have not faced up to the truth: our men, women and children are being killed needlessly; they are being maimed, injured, disabled and infected on the job by largely preventable injuries and diseases.

It is not accurate for those who oppose occupational safety and health legislation at the Federal level to state: "We are doing better." For in the past ten years the total number of deaths and disabling injuries has in fact increased, and this upward trend shows no signs of change.

Most states are not doing a creditable job in administering occupational safety and health programs when some of them annually spend as little as two cents per worker in job safety enforcement. State experience refutes the claim that industry is too diverse for Government programs to be effective in lowering accident rates. In fact, states with good occupational safety and health programs have an accident rate of 19 per 100,000 workers, and in those states with the poorest programs it is 110 per 100,000 workers, or over 550 percent higher.

We can no longer blame what happens to us on some remote or uncontrollable force. Modern logic will not permit the deliberate condoning of death, disease or injury when the causes are identifiable or preventable.

1970 brings a new and challenging decade. In the last ten years we have made great progress in realizing our social responsibility to all citizens. Our efforts must not diminish. The well-being of every American working man and woman is an essential human right which we can no longer deny.

SECTION-BY-SECTION ANALYSIS

SEC. 1—SHORT TITLE

This section provides that the act may be cited as the "Occupational Safety and Health Act."

SEC. 2—CONGRESSIONAL FINDINGS AND PURPOSE

This section finds that personal injuries and illnesses arising out of work impose a substantial burden upon interstate commerce; and

that it is the policy of Congress to assure as far as possible every working man and woman safe and healthful working conditions in the following manner—

(1) Encouraging employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) Building on advances made through employer and employee initiative;

(3) Providing research, including research into psychological factors, and developing innovative methods;

(4) Exploring means for early detection of latent diseases, causal connections between diseases and work environment, and conducting research in health problems, recognizing the differences between occupational health problems and safety problems;

(5) Providing training programs to increase the number and competence of personnel;

(6) Providing development, promulgation, and effective enforcement of occupational safety and health standards;

(7) Encouraging States to assume responsibility for administration and enforcement, and to conduct experimental and demonstration projects by providing grants to States;

(8) Providing accident and health reporting procedures;

(9) Encouraging joint labor-management efforts.

SEC. 3—DEFINITIONS

This section defines the terms "Secretary," "commerce," "person," "employee," and "State." In addition, of particular significance are the provisions which define the term "occupational safety and health standard" as a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safe or healthful employment and places of employment, and the term "national consensus standard" as any occupational safety and health standard or modification which (A) has been adopted and promulgated by a national standards-producing organization under procedures whereby it can be determined by the Secretary that persons affected have reached substantial agreement on its adoption (B) and formulated after an opportunity for consideration of diverse views (C) and designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies. The term "established Federal standard" is defined to mean any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any act of Congress in force on the date of enactment. The term "employer" is defined to exclude the United States and States and their political subdivisions, but to include any public authority which is subject to the jurisdiction of more than one State and has employees engaged in the administration or maintenance of a bridge or tunnel.

SEC. 4—APPLICABILITY OF ACT

(a) Designates geographic application of act and provides that in areas where there are no Federal district courts having jurisdiction, the Secretary of the Interior shall provide for judicial enforcement.

(b)(1) Provides that this act shall not be deemed to repeal other Federal laws prescribing safety or health requirements or rules or regulations promulgated pursuant to such law.

(2) Provides that standards promulgated under this Act will replace any corresponding standards promulgated under certain listed laws relating to safety and health of employees.

(3) Requires the Secretary to report his recommendations to the Congress for legislation to avoid unnecessary duplication between this act and other Federal laws within 3 years after the effective date of the act.

SEC. 5—DUTIES OF EMPLOYERS

Each employer—

(1) Has a *duty* to provide his employees with a safe and healthful workplace.

(2) Must comply with occupational health and safety standards and with interim standards promulgated under this act, except as provided in Sec. 17 (relating to State jurisdiction and State plans)

SEC. 6—INTERIM SAFETY AND HEALTH STANDARDS

This section provides that the Secretary shall by rule promulgate interim standards during the 2-year period from the effective date of this act.

These standards may be—

any national consensus standard;

established Federal standard (not limited to its present area of application);

standards proposed by a nationally recognized standards-producing organization by other than a consensus method—unless promulgation would not result in improved health or safety for employees. In the event of conflict among standards the one which offers the greatest protection of the safety and health of affected employees will be promulgated.

This section also provides for a public hearing and for the application of section 553 of title 5, United States Code (Rule-making provisions of the Administrative Procedure Act).

The Secretary must commence a proceeding under section 7 for promulgation of an occupational safety and health standard within 90 days concerning the same subject matter dealt with by an interim standard or any additional matter which the Secretary deems relevant within 90 days after the interim standard is promulgated.

Each interim standard shall stay in effect until superseded by another interim standard or superseded pursuant to a rule issued under section 7.

SEC. 7—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

(a)(1) Provides procedures for the Secretary to promulgate, modify, or revoke any occupational safety and health standard by which he will commence appointing an advisory committee under section 8(b). The advisory committee shall submit its recommendations within 270 days (or longer or shorter if the Secretary prescribes). These recommendations are printed in the Federal Register as notice of proposed rule-making. This section also provides that the Secretary can extend the

life of the advisory committee for an additional 6-month period after the expiration of 270 days.

(2) Provides that within 4 months after submission of advisory committee recommendations or the Secretary's proposals (made where an advisory committee has failed to submit recommendations), the Secretary shall give notice of a hearing. Such notice (including time, place, subjects, issues, and recommendations) is to be published in the Federal Register 30 days prior to the hearing. Only those who have submitted comments prior to the hearing shall have a right to submit oral evidence at the hearing but nothing shall prevent anyone from submitting written views for consideration.

(3) Provides that within 60 days after completion of a hearing on the record the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety and health standard or make a determination that a rule should not be issued. Such rule may contain a provision delaying the effective date up to 90 days to permit familiarization of employees and employers with the standard and its terms.

(4) Requires the Secretary in setting standards to set the standard which assures, on the basis of the available professional evidence, that employees will not suffer impairment of health, functional capacity, or diminished life expectancy with exposure throughout their working lives.

(b) Provides for an exemption procedure from section 5(2) (Standards). If after an opportunity for a formal hearing and an opportunity for an inspection by the Secretary the proponent has demonstrated by a preponderance of the evidence that the variation is as safe and healthful as if the proponent complied with the standard. The rule or order must state the conditions and practices the employer must utilize and the extent to which they differ from a section 5(2) standard.

Affected employees shall be given notice of an application for exemption.

Such rule may be modified or revoked at any time after at least 6 months after issuance upon application by an employer, employees, or by the Secretary on his motion.

(c) Requires the Secretary to determine as soon as possible (but not more than 90 days) after a special inspection whether to promulgate an occupational health and safety standard on an emergency temporary basis. Such a standard would take effect 30 days after its publication in the Federal Register. A standard will be promulgated under this authority if the Secretary finds that employees are exposed to grave danger from exposure to substances determined to be toxic or to new hazards and that the emergency standard is necessary to protect employees from the grave danger. These standards will be effective for up to six months or until the termination of a proceeding for the issuance of a permanent standard. Such a proceeding will utilize the procedures of sections 556 and 557 of title 5, United States Code, and the emergency standard will serve as a proposed rule in the proceeding.

(d) Provides that whenever the Secretary promulgated any standard, makes any rule, order, decision, grants any exemption or extension of time, or initiates any penalty under this act, he shall include a statement of the reasons for such action, and such statement shall be published in the Federal Register.

SEC. 8—ADMINISTRATION; ADVISORY COMMITTEES

(a)(1) Permits the Secretary to use the services, facilities, or personnel of another Federal agency, or of a State or its political subdivision.

(2) Permits the Secretary to employ experts and consultants.

(b) This subsection directs the Secretary to appoint an advisory committee not to exceed 15 members to commence section 7 proceedings and designates specific representatives to serve, as well as other public members qualified by knowledge and experience, but the number of persons so appointed to any advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies.

This subsection also provides for the compensation of advisory committee members but forbids one to serve as a committee member (other than representatives of employers and employees) who has an economic interest in any proposed rule.

All committee meetings are to be open and an accurate record is to be kept.

(c) Provides for a National Advisory Committee composed equally of representatives of management, labor, occupational safety and health professions, and of the public. Occupational health representatives to be appointed by Secretary of HEW; others by Secretary of Labor. Provides for consultation with the Secretaries of Labor and Health, Education, and Welfare and at least two open meetings annually.

SEC. 9—INSPECTIONS, INVESTIGATIONS AND REPORTS

(a) The Secretary, upon presenting appropriate credentials, is authorized—

(1) to enter premises at reasonable times of any work place where work is performed to which this act applies;

(2) to make reasonable inspections and investigations of conditions in workplaces and to question owners, operators, agents or employees.

(b) Provides the Secretary of Labor with a subpoena power of books, records, and witnesses.

(c) Provides that employers shall keep such records as the Secretary requires and provides that the Secretary shall make such regulations as may be necessary so that employers keep employees informed of their rights and privileges under this act. This section also requires the Secretary, in cooperation with the Secretary of HEW, to keep records of all work-related injuries and diseases which arise from the working environment.

(d) Provides that employers should have minimum burden for recordkeeping, especially small businesses.

(e) A representative of the employer and an authorized representative of employees shall be given an opportunity to accompany any person making an inspection under (a).

SEC. 10—CITATIONS FOR VIOLATIONS

(a) Provides that if the Secretary, after inspection, determines that an employer has violated—

Section 5(2) (occupational safety and health standards (including emergency standards) or interim standards);

Section 7(b) (exemption order);

Section 9(c) (reporting requirement);

and that a *serious danger* exists by reason of any such violation, the Secretary shall issue a citation to the employer for such violation—

(1) in writing,

(2) describing the specific nature of the violation and the specific standard violated,

(3) and the time for correction.

It provides that if the Secretary after inspection determines that an employer has violated—

Section 5(1) (Duty) and a *serious danger exists*;

Section 9(c) (reporting requirement) and *no serious danger exists*—the Secretary shall issue a citation to the employer for such violation—

(1) in writing,

(2) describing the specific nature of the violation and the specific standard violated,

(3) the period of time within which it must be corrected.

Employers will not be deemed to have violated a citation issued for a violation of section 5(1) (duty) if they are complying with an applicable standard or a State plan which is in effect.

It provides that the Secretary after inspection determines that an employer has violated—

Section 5(1)—Duty

Section 5(2)—Standards—

and specifically determines that *no serious danger exists*, he shall issue a citation—

(1) in writing,

(2) describing the nature of the violation.

(The Act does not provide a penalty for this citation, except in the case of a willful violation.)

It provides where citation is issued under subsection (a) or (b) for a violation which might cause cumulative or latent ill effects, such citation shall specify, where feasible, a period during which employers shall accurately measure the exposure of employees to such danger.

It provides for prominent posting of a citation at or near place of violation in accordance with regulations made under 9(c).

It defines "serious danger potential" as a substantial probability that at any time death or serious physical harm could result from a condition which exists in a place of employment.

SEC. 11. PROCEDURES FOR ENFORCEMENT

(a) If the Secretary issues a citation under section 10 (other than subsection (c)), he shall within 10 working days of the inspection or investigation notify the employer of the penalty, if any, proposed to be assessed under section 16. The employer then has 15 working days to notify the Secretary whether he wishes to contest the citation or proposed assessment. If he fails to give such notice, the citation and the proposed assessment will be final and not subject to review. For purposes of enforcement it would be considered an order issued by the Secretary under subsection (b).

(b) If an employer decides to contest a citation or proposed assessment, or where the Secretary believes an employer has not corrected a violation within the prescribed period, the Secretary will after

affording an opportunity for a hearing, and on the basis of findings of fact, issue an order confirming, denying, or modifying the citation or assessment, or issue an order for the correction of the violation for which the citation was issued and for the assessment and collection of any penalty under section 15. In these proceedings the Secretary will adjudicate, among other things, the validity of the standard, rule, order, or regulation alleged to have been violated, and the reasonableness of the time permitted for the correction of the violation.

(c) Upon issuance of an order under subsection (b), the Secretary is empowered to petition the U.S. district court. The court has the jurisdiction to enforce (by restraining order, injunction, or otherwise) any order of the Secretary issued under subsection (b). Except in the case of an order which becomes final under section 11(a), any person aggrieved by an order of the Secretary issued under subsection (b) may obtain review by the U.S. district court in accordance with section 706 of title 5, U.S.C., by filing for review within 30 days of the issuance of the order.

SEC. 12—PROCEDURES TO COUNTERACT IMMINENT DANGERS

(a) This section provides the Secretary of Labor may issue an order prohibiting employment in a place where an imminent danger exists for not more than 5 days from date of issuance.

(b) Provides that if the Secretary determines that an imminent danger exists, he may bring a civil action in the U.S. district court or a temporary restraining order or injunction prohibiting employment or presence of individuals where the imminent danger exists. An action may be brought under this subsection while an order of the Secretary under subsection (a) is in effect.

A court order under this section becomes ineffective if it is determined under other provisions of the act that no violation exists.

(c) This subsection provides that where the Secretary acts arbitrarily or capriciously in issuing or failing to issue a 12(a) administrative order, any person injured thereby either physically or financially may bring an action in the Court of Claims.

(d) Defines "imminent danger" as a danger which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated.

SEC. 13—REPRESENTATION IN CIVIL LITIGATION

Provides that the Solicitor of Labor may appear and represent the Secretary in civil litigation subject to the direction of the Attorney General.

SEC. 14—CONFIDENTIALITY OF TRADE SECRETS

This section deals with the confidentiality of trade secrets.

SEC. 15—PENALTIES

(a) Any employer who—

- (1) receives a citation under 10(a),
- (2) fails to correct a violation which a citation has been issued under 10(a) within the period permitted for its correction,
- (3) violates an order issued under 12(a)—

shall be assessed a penalty by the Secretary pursuant to a section 11(b) order, a civil penalty of not more than \$1,000 for each violation. Each

violation is a separate offense, except when the violation is of a continuing nature after a reasonable time specified in an initial decision following the hearing under 11(b), or during the time allowed in the order under 11(b) for correction, or during the time a review is pending. The Secretary may mitigate civil penalties under certain criteria.

(b) Any employer who receives a citation under section 10(b) or fails to correct a violation for which such a citation is issued within the time prescribed, may be assessed by the Secretary, pursuant to an 11(b) order, a civil penalty of not more than \$1,000 for each violation.

Each violation is a separate offense except when the violation is a continuing one after a reasonable time specified following the hearing under 11(b), or during the time allowed in the order under 11(b) for correction or during the time a review is pending.

The Secretary may mitigate civil penalties under certain criteria.

(c) Provides for assessment of penalties as above, for any willful violation of an interim standard or occupational health and safety standard.

(d) Provides any person who forcibly resists a person in the performance of his duties under this act is subject to a \$5,000 fine or imprisonment of not more than 3 years or both. The use of a dangerous weapon or murder of a person in the performance of his duties subjects one to felony charges.

(e) Provides criminal penalty of 1 year or \$1,000 for advance notice of any inspection, except where the Secretary and the Secretary of HEW conduct necessary investigations to utilize or disseminate information relating to health or safety conditions.

(f) Provides a criminal penalty of imprisonment for up to one year or a fine of up to \$1,000, or both, for discriminating against an employee because he has sought to use the protection of this Act.

SEC. 16—VARIATIONS, TOLERANCES AND EXEMPTIONS

The Secretary may provide reasonable limitations, variations, and tolerances to avoid serious impairment of the national defense; to be effective for no more than 6 months unless notice and opportunity for hearing is afforded affected employees.

SEC. 17—STATE JURISDICTION AND STATE PLANS

(a) Provides that a State may assert jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6 (interim standards) or section 7 (occupational safety and health standards).

(b) Provides that States can submit a state plan for the development and enforcement of standards relating to occupational safety or health issues that have been dealt with in standards promulgated under section 7.

(c) Provides that the Secretary shall approve the plan submitted by a State under subsection (b) or any modification thereof, if—

- (1) a State agency (or agencies) is designated for administering a plan throughout the State;
- (2) it provides for the development and enforcement of standards which are or will be at least as effective as section 7 standards;
- (3) it provides for the effective right of entry and inspection of all workplaces subject to the act at least as effective as provided in section 9 (a), (c), (d), and (e), and includes a prohibition on advance notice of inspections;

- (4) it contains assurances of legal authority and qualified State personnel;
- (5) it contains assurances of adequate State funds for administration and enforcement;
- (6) it makes all standards included under the plan applicable to all employees of public agencies of the State and its political subdivisions;
- (7) it requires employers in the State to make reports in the same manner and extent as if the plan were not in effect;
- (8) it provides that the State agency will make reports to the Secretary in such form as the Secretary shall from time to time require.

(d) Provides that if the Secretary rejects a plan, he shall afford a State due notice and opportunity for a hearing.

(e) Provides after approval of a State plan, the Secretary may exercise his authority under sections 9, 10, 11, and 15 with respect to comparable standards promulgated under section 7 for at least 3 years after the plan's approval under subsection (c). After State plan approval, provisions of sections 5(2), 9 (except for the purposes of carrying out subsection (f)), 10, 11 and 15 shall not apply, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under sections 10 and 11 before the date of determination.

(f) Provides that the Secretary continually evaluate a State plan. The Secretary has the power to withdraw approval of a State plan if he finds a failure to comply substantially with any provision of the State plan.

(g) The State may obtain review of withdrawal of approval or rejection in the U.S. Court of Appeals. The Secretary's decision shall be sustained unless the court finds that the Secretary's decision is arbitrary and capricious. This subsection provides for further appeal to the Supreme Court.

SEC. 18—FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

(a) Provides that each Federal agency shall maintain a comprehensive occupational safety and health program consistent with standards promulgated under section 7. The head of each agency, after consultation with representatives of employees, shall provide —

- (1) standards consistent with standards under section 7;
- (2) acquire and maintain and require the use of safety devices to protect its personnel;
- (3) keep adequate records;
- (4) make an annual report to the Secretary with respect to occupational accidents and injuries.

(b) Provides that the Secretary shall submit a summary of reports submitted to him under subsection (a)(4) to the President. The President shall transmit annually to the Senate and House of Representatives a report of the activities of Federal agencies under this section.

(c) Amends section 7902(c)(1) of title 5, United States Code, by permitting labor organizations representing employees to serve on the President's Federal Safety Council.

SEC. 19—RESEARCH AND RELATED ACTIVITIES

(a)(1) Provides the Secretary of Health, Education, and Welfare, after consultation with the Secretary of Labor and other appropriate Federal agencies, shall conduct research (directly or by grant or contract) into relating to occupational safety and health, including innovative methods of dealing with occupational safety and health problems.

(2) Provides that the Secretary of Health, Education, and Welfare shall consult with the Secretary of Labor to develop specific plans for research necessary to produce criteria enabling the Secretary to formulate safety and health standards under this act. The Secretary of Health, Education, and Welfare is also required to develop and publish at least annually criteria which would, if applied, protect employees from diminished health or life expectancy because of their work experiences.

(3) Provides that the Secretary of HEW shall conduct special research to explore new problems created by technology in occupational safety and health. The Secretary of HEW shall also conduct research into motivational and behavioral factors.

(4) Requires the Secretary, in conjunction with the Secretary of Health, Education, and Welfare, to develop procedures for accurately measuring and recording exposure to substances, conditions, or processes which he believes will endanger safety or health. In carrying out this requirement, the Secretary or the Secretary of Health, Education, and Welfare may require employers to measure or record concentrations or exposures to employees where he determines their health or safety may be in danger and that further information is necessary and the substance, condition, or process is not covered by an occupational safety and health standard or a criteria established by the Secretary of Health, Education, and Welfare. If the substance, condition, or process is covered by a criteria issued by the Secretary of Health, Education, and Welfare, then the Secretary may, where necessary, require employers to measure or record particular substances. If the substance, condition, or process is covered by an occupational safety and health standard, and an employer is not in compliance with it, he shall be required to measure and record the particular substances for as long as the Secretary deems necessary to assure future compliance. The above requirements are applicable only where the measurement is technologically feasible and necessary equipment is available at reasonable cost. Authority of section 9(c) is to be used in carrying out this paragraph.

(5) Within 6 months of enactment, and annually thereafter, the Secretary of HEW shall publish a list of all known or potentially toxic substances and concentrations at which toxicity occurs, and shall if requested by an employer or authorized representative of employees apprise those affected of the findings. Within 60 days of such determination, an employer shall not require any employee to be exposed to such toxic substance unless it is accompanied by information made available to employees by label or other appropriate means of the hazard, and proper conditions and precautions for safe use and emergency treatment, and personal protective equipment is supplied or unless such exposed employee may absent himself from such risk of harm for the period necessary to avoid danger without loss of compensation.

(b) Provides that the Secretary of HEW is authorized to make unannounced and question employees as provided in section 9

(c) Provides that the Secretary is authorized to enter into contracts or arrangements with public agencies or private organizations for the purpose of conducting studies related to establishing and applying standards, under section 7. Provides for cooperation between the Secretary and the Secretary of HEW to avoid duplication of effort under this section.

(d) Provides that the Secretary and the Secretary of HEW and an appropriate State official shall establish health and accident reporting systems for employers and the States as the Secretary deems necessary.

(e) Provides for the dissemination of information by the Secretary and the Secretary of HEW to employers and employees and organizations.

SEC. 20—TRAINING AND EMPLOYEE EDUCATION

(a) Authorizes the Secretary of HEW, after consultation with the Secretary of Labor and with other Federal agencies, to conduct directly or by grant or contract, programs—

- (1) to educate and train personnel;
- (2) to provide informational programs.

(b) Authorizes the Secretary to conduct directly or by grants or contracts short-term training of personnel.

(c) Provides that the Secretary together with the Secretary of HEW shall educate and train employers and employees in the recognition and avoidance of accidents, and consult and advise employers and employees as to means of preventing injuries and illnesses.

SEC. 21—GRANTS TO THE STATES

(a) Provides that the Secretary, during fiscal year 1971, and the 2 succeeding fiscal years, make grants to State agencies designated under section 17(c) to assist—

- (1) in identifying needs;
- (2) in developing plans under section 17;
- (3) in developing plans for—
 - (a) collecting statistical data;
 - (b) increasing personnel capabilities;
 - (c) improving administration and enforcement, including standards.

(b) Provides that the Secretary, commencing in fiscal year 1971, and the 2 succeeding fiscal years, shall make experimental and demonstration grants.

(c) Provides that the Governor of a State shall designate the State agency to receive a grant.

(d) Provides that the State agency designated by the Governor shall submit grant application to the Secretary.

(e) The Secretary, after review with the Secretary of HEW, shall accept or reject the application for grant.

(f) The Federal share for each State grant under (a) or (b) of this section may be up to 90 percent. Different percentage distribution among the States shall be established on the basis of objective criteria.

(g) Authorizes the Secretary to make grants to States to assist them in administering and enforcing programs for occupational safety and health contained in State plans. The Federal share may be up to 50 percent of the total cost. Differential in allotments to the States must be based on objective criteria.

(h) The Secretary must make a report after consultation with the Secretary of HEW to the President and the Congress prior to June 30, 1973.

SEC. 22—EFFECT ON OTHER LAWS

(a) This provision makes it clear that this law will not supersede or affect any workmen's compensation law or enlarge, diminish, or affect common law or statutory rights, duties, or liabilities under any law related to injuries, occupational or other diseases, or death of employees arising out of, or in the course of, employment.

(b) This subsection provides that section 5 shall not apply to working conditions of employees with respect to whom a Federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

SEC. 23—AUDITS

(a) This provision provides audit procedures for recipients of grants under this act.

SEC. 24—REPORTS

This section requires the Secretary and the Secretary of Health, Education, and Welfare to make annual reports to the President for transmittal to the Congress.

SEC. 25—APPROPRIATIONS

This section authorizes the appropriations necessary to carry out the Act.

SEC. 26—EFFECTIVE DATE

This section provides that the Act will become effective at the beginning of the first month which begins more than 30 days after its enactment.

SEC. 27—SEPARABILITY

This section contains the usual separability provision

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italics*; existing law in which no change is proposed is shown in roman):

SECTION 7902(c)(1) OF TITLE 5, UNITED STATES CODE

§ 7902. Safety programs

• • • • •

(c) The President may—

(1) establish by Executive order a safety council composed of representatives of the agencies and of *like organizations representing employees* to serve as an advisory body to the Secretary in furtherance of the safety program carried out by the Secretary under subsection (b) of this section; and

(2) undertake such other measures as he considers proper to prevent injuries and accidents to employees of the agencies.

MINORITY VIEWS ON H.R. 16785

We had every confidence that in this session of Congress we would see the enactment of effective Federal legislation to bring about safe and more healthful working conditions in this country. That confidence was born of the fact of President Nixon's having recommended this legislation in three separate messages to Congress, including a special one devoted exclusively to the urgent and unique problems of job safety and health.

Our hope was sustained over the months by clear indications from majority members that while reasonable men might differ, any differences could be worked out so that we might achieve the goal of enacting a genuinely effective law to reduce job hazards. These indications of apparent willingness to overcome differences even led us to offer a completely new bill as a substitute for the Administration's original bill. And we were willing to reach further accord with the majority up until the final moments before the Committee reported out its bill.

Unfortunately, our efforts were in vain. In retrospect, the majority's willingness to work out disputed points proved to be illusory. In sum, the Committee had rejected the original Administration bill which had been carefully drafted to take account of the harsh but well deserved lessons learned from the 90th Congress' experience with occupational safety and health legislation. The Committee then rejected the Administration's substitute; and finally, spurning even our eleventh hour endeavors to produce a viable piece of legislation, the Committee reported out a bill which we had to vote against.

The measure as reported by the Committee is unacceptable because in rejecting the concept of an independent Board to set standards, the bill would create a monopoly of functions in the Secretary of Labor. Such a monopoly not only ignores the element of fairness to those required to comply with the Act, but also fails to resolve the jurisdictional division between HEW's responsibility for health and the Labor Department's for safety. In addition, the Committee bill does not overcome the widespread objection to permitting an inspector to close down a plant in imminent-danger situations. We regard this as a serious shortcoming. Lastly, the Committee bill contains a sweeping general duty requirement that employers maintain safe and healthful working conditions. This broad mandate is grossly unfair to employers who may be penalized for situations which they have no way of knowing are in violation of the Act.

I. GENERAL DIFFERENCES

The single most important difference between the Committee bill and the substitute is where and how, each would place the prime responsibility for providing safe and healthful working conditions.

The Committee bill follows the stock approach of placing all responsibility in the Secretary of Labor. He would set standards through a

time-consuming and complicated procedure involving *ad hoc* advisory committees, he would enforce the standards, prosecute violations before Labor Department hearing examiners; and he again, would be the one to issue corrective orders along with assessing civil penalties.

The substitute bill, on the other hand, refocuses responsibility for job safety and health by distributing these functions. In an effort to stress the importance and non-partisan nature of occupational safety and health, the substitute bill would create a new, top-level independent National Occupational Safety and Health Board to set standards, composed of five members who would be appointed by the President solely because they are high calibre professionals in the field of occupational safety and health. The members would serve at the pleasure of the President so that the independent Board does not become the captive of any special interest and remains responsible to the President.

The fact that the proposed legislation is concerned with working men and women is not sufficient reason for placing the standard-setting function under the Department of Labor. The Federal Mediation and Conciliation Service, the National Mediation Board, and the National Labor Relations Board, for example, are wholly concerned with matters pertaining to labor—nevertheless, they are entirely independent of the Department of Labor. Thus, there is ample statutory precedent for our proposed independent Safety and Health Board.

But even more significant is this. The members of the Board will not be appointed because they are Democrats or Republicans, pro-labor or pro-management, an approach which unfortunately has too often been followed in the making of appointments to Federal positions. The problems to be dealt with are not political, they are not primarily economic, they do not involve issues where there are deep differences concerning policy. To the contrary, these problems are almost entirely technical and technological. The appointment of an independent Board whose members must be highly competent professional experts in a field where the subject matter is almost wholly objective and susceptible to genuinely scientific and technical analysis, judgment, and decision, would insure the utmost confidence in every segment of the American public.

And finally, the creation of a Board of this kind would more than meet the recommendations for a national advisory commission or for such a Board itself, which were made by the leading professional organizations in the safety and health fields, such as the National Safety Council, the American Industrial Hygiene Association, the American Academy of Occupational Medicine, the Industrial Medical Association, the American Society of Safety Engineers, and several of the State health or industrial safety agencies which testified in the hearings held during the present or immediately preceding Congress.

Instead of prevailing both fair and uncomplicated procedures, the substitute bill would thus have the Board set standards, simply using the familiar procedures under the Administrative Procedure Act (APA). The Secretary of Labor would conduct inspections, and in violation cases, he would seek enforcement in the Safety and Health Commission created by the substitute and United States appellate courts in accordance with procedures which would provide appropriate equity remedies and assess civil penalties.

II. SPECIFIC SIGNIFICANT DIFFERENCES

1. *Standards*

The Administration's substitute bill provides very simply that the Board set standards according to the formal procedures of the APA. This means that a full hearing will be held so that a wide variety of views can be aired; and standards will be based on substantial evidence with an opportunity to cross-examine.

However, the substitute bill also recognizes that out-of-the-ordinary situations will arise in which the Board has to act quickly and should not have to go through a hearing before it can respond to these situations. Therefore, section 6(b) of the substitute bill provides that where it is *essential* to protect the health or safety of employees, national consensus standards or established Federal standards can go into effect *immediately* on publication in the Federal Register, and they will remain in effect until later superseded by standards promulgated through formal APA hearings.

Also, section 6(i) of the substitute bill provides that where employees are exposed to *grave* danger from exposure either to toxic substances or to hazards resulting from new processes, then the Board may issue new "emergency temporary standards". These too would go into effect immediately on publication but would remain in effect until superseded by standards promulgated pursuant to formal APA proceedings. The substitute requires the Board to start formal APA proceedings by publishing the temporary standard as the notice of proposed rule making, as soon as the emergency temporary standards are published. The Board is required to promulgate such standard within six months after the publication of the temporary standard.

The substitute bill provides that where an applicable national consensus standard, or an established Federal standard exists, then the Board would begin with those standards as the proposed rules for the hearings used to set permanent standards. If the standard as finally promulgated by the Board differs from the original proposed rule, then the Board must state its reasons for departing from the original.

The Committee bill would also set permanent standards through formal APA hearings, but before these hearings even begin, it would be necessary to go through an intricate maze of procedures involving assorted advisory committees. Whenever the Secretary wanted to set a standard under the Committee bill, he would have to appoint an advisory committee. This advisory committee has up to nine months to submit its recommendations to the Secretary and the Secretary may not begin any hearings until he has afforded the advisory committee the prescribed time to submit its recommendations. Although the Secretary may shorten this period, the Committee bill also provides that he may lengthen it; but there is an outside time limit of one year and three months.

After this excessive length of time, the Secretary has an additional four-month time period before he is required to hold a formal hearing on the advisory committee's recommendations.

If the committee does not submit recommendations on time (bearing in mind this can be up to well over a year), the Secretary may wait up to four more months before he has to schedule a hearing; the hearing begins 30 days after scheduling.

By simple arithmetic, we compute that under the Committee's bill, the Secretary of Labor might well have to wait close to two years

before a formal hearing begins. This means that it may take him all that time just to catch up to the starting point of the Board's standard-setting procedure under the substitute bill.

It is understandable that the Committee bill would have to provide these excessive preliminary time lags. After all, it is going to take time to set up an array of *ad hoc* committees and more time still for each of them to undertake and complete their required assignments before they will be in any position to make their recommendations. However, no such time periods are needed under the substitute bill since a full-time, top professional National Board would be continually involved in standards-development and therefore needs only to commence a formal APA hearing when it seeks to set permanent standards.

2. Enforcement

The Committee bill's enforcement provisions are as complicated as its standard-setting procedures, but the enforcement provisions present uniquely serious problems because due process is a matter of grave personal concern where enforcement is involved.

Under the Committee bill, the Secretary of Labor conducts inspections, holds hearings before Labor Department hearing examiners, and it is also the Labor Department which issues corrective orders and assesses civil penalties.

Unlike the Committee bill the substitute provides for an *effective* and *fair* method of enforcement. The Secretary of Labor would continue to be responsible for making inspections and investigations. However, a special permanent three-member administrative Occupational Safety and Health Appeals Commission would be appointed to conduct formal hearings on alleged violations which were discovered by the Secretary, and the Commission would issue any necessary corrective orders, as well as assess penalties. The Commission would utilize hearing examiners whose decisions would become final unless an appeal is made to the Commission.

3. General Safety and Health Requirement

We strongly object to the Committee bill's sweeping general requirement that employers furnish safe and healthful working conditions. This was one of the first provisions which this Committee struck when it reported an occupational safety and health bill in the 90th Congress. Why it has not done so again is beyond our comprehension. The argument used in support of the Committee bill's general requirement is that a similar provision is found in the Walsh-Healey Act, the Service Contract Act, the Maritime Safety Act, and in the laws of some 35 States. This argument does not persuade us.

The Walsh-Healey and Service Contract Acts deal with the duties of those who contract with the Government. If a person freely contracts with the Government, then he assumes the responsibility for maintaining safe and sanitary working conditions as provided for in those two procurement-related statutes. While the language of the requirement in those two laws may be general, its application could hardly be described as "general" since coverage under those Acts extends only to those circumstances to which the supply and service contracts themselves apply. Moreover, we understand that the general safety and health requirements of those two Acts have never been enforced in the absence of specified standards.

In the case of the Maritime Safety Act, the term "general" safety and health requirement is also a misnomer. The Maritime Safety Act applies to a single industry, so by force of circumstances, that Act does not contain a so-called general requirement like the one in the Committee bill which would apply to the whole spectrum of American industry.

States also do not have general safety and health requirements in the same sense as the Committee bill does. Not only do none of the States provide the wide and varied coverage of the Committee bill, but many State laws apply only to limited areas of activity such as boiler and elevator safety.

The objection to the very broad general safety and health requirement is not, of course, that there are no valid arguments to justify it. The offensive feature of such a provision is that it is essentially unfair to employers to require compliance with a vague mandate applied to highly complex industrial circumstances. Under such a mistake, the employer will simply have no way of knowing whether he is complying with the law or not, nor will the inspector have any concrete criteria, either statutory or administrative, to guide him in finding a violation.

On the one hand, the Committee bill recognizes this industrial complexity by providing for specific standards to be developed through the use of any number of advisory committees and public hearings. But the Committee does a turnabout, and requires the employer to follow a mandate which is almost as broad as "do good and avoid evil." We seriously doubt that the Committee bill could be enforced on the basis of this broad requirement; but if it could, we would be faced with the serious problem that there would be no incentive to develop any standards where such a broad mandate exists.

We recognize, however, that specific standards could not be fashioned to cover every conceivable situation. We would be remiss in our duty, if any worker were killed or seriously injured on the job merely because there was no particular standard applicable to a dangerous situation which was apparent to an employer. Hence, in addition to requiring employers to comply with the specific standards promulgated by the Board, and applicable to them, the substitute bill also requires each covered employer to furnish his employees employment and a place of employment which are free from any hazards which are readily apparent and are causing or are likely to cause death or serious physical harm to his employees.

III. CONCLUSION

Despite our criticism of various provisions of the Committee bill, we do not wish to convey the impression that we object to the bill in its entirety; quite the contrary. Many provisions of the Committee bill are in large part, satisfactory and comparable provisions are found in our substitute. Some examples are the State grants section, the provisions for State participation through the submission of plans, the carefully circumscribed employer-exemption provisions, and the Federal employee safety program. A few provisions, in addition to those discussed herein, are more questionable. Several other provisions of the Committee bill would be acceptable if they were modified.

However, we regard the establishment of an independent Board to promulgate standards and due process as essential provisions which cannot be omitted from any bill which genuinely purports to have the

best interests of employees and employers as the basis for its enactment. Hence, we intend to offer our own proposal, which was rejected by the Committee's majority, as a substitute for H.R. 16785 as reported by the Committee.

WILLIAM H. AYRES.
ALBERT H. QUIE.
JOHN M. ASHBROOK.
JOHN N. ERLNBORN.
WILLIAM J. SCHERLE.
MARVIN L. ESCH.
EDWIN D. ESHLEMAN.
WILLIAM A. STEIGER.
JAMES M. COLLINS.
EARL F. LANDGREBE.
ORVAL HANSEN.
EARL B. RUTH.

ADDITIONAL MINORITY VIEWS OF REPRESENTATIVES SCHERLE, ASHBROOK, ESHLEMAN, COLLINS, LAND- GREBE, AND RUTH

There are few matters of greater importance to both employers and working people than that of on-the-job safety and health. Yet, regrettably, for the second year now, the members of this committee have failed to reach public agreement on this vital issue.

The situation has not been helped by the excessive emotion generated mostly by people with little knowledge or practical experience in these fields. This emotionalism has brought us to the verge of making this issue a partisan one. That is unfortunate.

In our view, it is wrong to imply that accidents will end or substantially diminish if only Congress would pass a law. Poor safety laws can and have done more harm than good. Mistakes we make now will have a serious impact on workers and on the state of our economy.

We must also recognize that this legislation will affect nearly every aspect of the employment relationship. The federal government will be called on to regulate such diverse matters as the height of railings, the amount of dust in the air, noise levels and the type of equipment to be used to perform a particular task. Potentially, regulations could be adopted fixing the number of hours employees should work, the qualifications needed to perform a job and the size of crews thought necessary for safe work performance.

Because of the importance of these subjects to both employers and employees, great care must be taken by us. For that reason we have decided to expand on the minority views.

The goal of any occupational safety and health bill can be stated simply: we must foster improved standards of health and safety for American workers and do it in a way that is reasonable and fair. We have little patience with those who believe that to be effective we must destroy fair trial procedures and due process. Neither justice nor safety will be achieved by that kind of approach. We will, therefore, oppose H.R. 16785. It is a penalty oriented bill that does little to build upon and encourage what has already been done by private employer and employee groups in the field of occupational safety and health. It also raises several serious constitutional problems.

Some of the specific defects in H.R. 16785 are as follows:

No Separation of Powers.—The committee bill vests all authority to write, police and enforce standards in the Secretary of Labor. This procedure is contrary to the basic constitutional theory of separation of powers. It is tantamount to having the chief of police, in addition to his regular duties, also write criminal laws and then act as judge and jury.

In order to provide for effective safety standards, provision must be made for the establishment of an independent, impartial board of ex-

perts to develop, on the basis of facts and upon their knowledge and experience, regulations in this field.

Undeclared Obligations—Although H.R. 16785 requires compliance with all interim, permanent and emergency standards promulgated by the Secretary, it also imposes an additional *general duty* upon employers to keep a safe and healthful work place. A penalty of \$1,000 per day can be imposed on violators of this catch-all provision. The Supreme Court has ruled that statutes must designate the standard of conduct expected so that affected parties can govern their actions in order to avoid violations. (See, *International Harvester v. Kentucky*, 241 U.S. 216; *U.S. v. Pennsylvania Railroad Company* 242 US 208). It seems inconceivable for anyone to suggest that we pass a law prohibiting the doing of wrong to anyone. Yet in effect, that is what Congress has been asked to do by the sponsors of H.R. 16785. The ruling of the Supreme Court makes good sense. We should heed its wisdom here.

Fair Protection of the Administrative Procedures Act Denied—When Congress passed the Administrative Procedures Act we recognized the importance of requiring government agencies to follow uniform procedures that preserved the effectiveness of the laws to be enforced and at the same time compelled fair methods of developing and enforcing regulations. H.R. 16785 departs from the provisions of the APA in at least two important respects.

First, Section 7 permits adoption of administrative regulations based upon "views and arguments" rather than solely on probative evidence. No reason has been offered justifying this deviation from regular and fair procedures. The requirements that administrative decisions be based upon facts and sound reasons mean little when a loophole of this type is included in a statute.

Second, the bill also authorizes the establishment of an extensive measurement, accident and health reporting system (See Section 19 (a)(4)(C) and Section 19 (a)(5)(D)).

Regulations under these provisions are a matter of great importance to employees and also will have a substantial financial impact on employers—particularly in the health field where regular psychological studies and medical examinations are obviously contemplated.

Yet, the validity of any regulations developed in this area could not be tested in court pursuant to the normal appeals procedures of Section 10 of the Administrative Procedures Act. This is so because administrative action by the specific language of the bill is committed to the discretion of the Secretary. (See *Attorney General Manual on the Administrative Procedures Act* at page 94.)

No Assistance to Employers—During the hearing estimates were made indicating that between 12 and 16 thousand consensus codes alone have been developed by businessmen themselves. These codes now are intended as non-mandatory guides. Shortly after this legislation is adopted, however, they will in all likelihood become a matter of law.

Experience with other safety regulations shows that some employers will have considerable financial difficulty in obtaining necessary funds to comply with the new mandatory regulations. H.R. 16785 makes no provision for federal assistance to these individuals. Certainly a federally insured loan program should be made available in order to protect against forced business close-downs and against the unemployment that will follow.

Ill-advised inspections provisions.—H.R. 16785 authorizes searches of employer establishments for safety and health violations. Such searches may be conducted without a warrant and individuals who are not government officials may participate in the search. Evidence so obtained may be used in a criminal prosecution. Anyone who gives advance notice of, or who forcibly resists such a search may be subject to criminal prosecution.

These provisions, in our view, indicate the unfortunate direction of this bill. The major approach is penal. It is more concerned with punishing employers at some wrong doing than with obtaining safe and healthful working conditions.

The fourth amendment of our constitution was designed to safeguard the privacy and security of individuals against arbitrary invasions and searches by government officials. (*Norman See v. City of Seattle* 387 US 541; *Camera v. Municipal Court* 387 US 523). The amendment is a concrete expression of a right that is basic to a free society. (*Wolf v. Colorado*, 338 US 25, 27). As a general rule, a search of private property must be decided by "a judicial official, not by a police or government enforcement agent." (*Johnson v. US* 333 US 10, 14).

Yet, instead of limiting this extraordinary power to government agents acting in carefully restricted circumstances the bill provides for participation in the search by non-government personnel. Even the use of advance notice of intention to search, relied on by some jurists to justify non-warrant inspections in some limited circumstances, is prohibited by the bill. (*See v. Seattle* 387 US 541, 549). Advance notice of inspection should obviously be permitted not only to satisfy constitutional consideration but also to permit appropriate company officials to be present in order to immediately correct any violation found.

Lastly, it should be noted that the only way an employer may test the constitutional validity of the search provided for by this legislation is by risking a conviction for forcibly resisting the effort to inspect.

We do not oppose inspections designed to protect the public or employees from unsafe and unhealthy working conditions. But we believe that the penal and other provisions that accompany the search procedures provided for in H.R. 16785 are untenable and unnecessary.

Imminent Danger Procedures.—It is equally distressing to note that H.R. 16785 is replete with potentially disruptive intrusions into harmonious labor-management relations.

The procedures to counteract imminent dangers, for example, contained in Section 12 of the bill, simply stated call for giving a federal safety inspector the power to issue an order closing down a place of employment if he discovers what he believes to be an "imminent danger." "An imminent danger" is defined as a danger which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated.

The stated purpose of giving this extreme power to one person was that the federal safety inspector would be able to protect employees in case a roof was about to collapse or a boiler about to explode. The prospect of a federal inspector happening upon a scene of imminent disaster is highly unlikely, at best. Nor would any federal safety inspector be needed to point out such situation to an employer; no employer would continue operating if such were actually the case.

More realistically, the all powerful inspector would become a pawn in labor disputes.

The great potential for misuse that would be created if this power were put into the hands of an inspector in the field was simply demonstrated during the public hearings. The testimony reflected fears that pressure would be brought to bear upon federal inspectors to shut down plants in cases other than *bona fide* imminent danger situations. Thus, this unrestricted power in one person would realistically find itself in the middle of labor-management disputes. It would be far simpler for a disgruntled employee to pass by established labor-management grievance procedures and complain to a federal safety inspector that unsafe conditions existed when the real basis of a dispute was properly a labor-management problem, to be settled by established collective bargaining methods.

One witness citing examples of experience in his industry stated:

"The following incidents are noted for the purpose of illustrating how the cause of safety and safety legislation has been invoked for other purposes.

"(1) In a Texas refinery, the union workers went out on strike at 2:00 a.m. on a Sunday morning. The unions gave the company only a few minutes notice of the impending strike and walked out leaving the refinery units unattended. The refinery, which had a contract with the Federal Government to supply jet fuel to the Air Force, was able to keep the plant operating with management personnel.

"The union sent a complaint to the Secretary of Labor (and published it in the local newspaper) charging that the plant was unsafe because it was not being operated by a full crew. It asked the Secretary to use his authority under the Walsh-Healey Act to find that the operation of the plant was not safe.

"The union issued a strike bulletin to its members stating that it was going to see that a safety investigation would follow so that the company's Government contracts would be cancelled. This plant had two safety inspections under the Walsh-Healey Act earlier the same year. Furthermore, its safety record during the strike period was considerably better than its average during the normal operation."

This example and others reflected in the record indicate that giving a federal safety inspector complete authority over operations of a business enterprise would certainly subject the inspector to intimidation pressures to act, and in many cases, he would be requested to inspect a plant simply to harass or intimidate employers. In essence, the exercise of this shut-down power amounts to summary punishment which is contrary to our established standards of law.

This is not to say, of course, that the Government should not have the power to avert a *bona fide* potential disaster. This is an inherent power of the Government, both Federal and Local. What is objectionable here is the method outlined in H.R. 16781, which has no safeguards or guidelines and realistically would tend itself to misuse.

Clearly, any Occupational Safety and Health Bill should recognize the possibility of disaster potential situations, and provide means for dealing with them. The appropriate means to this end would be through Courts. If a federal safety inspector comes upon what he believes to be an imminent danger situation, he should first notify the employer in an attempt to abate or clarify the situation. Then the Government official should seek injunctive relief in the Federal Courts.

This method would act as a safeguard against possible misuse of power or possible error on the part of the inspector, and more important, with the swift and ready access to our Federal Courts, a bona fide potential disaster situation could be dealt with in short measure. Thus, the health and safety of employees on the job could be reasonably safeguarded, while at the same time, the rights of the employer and the viability of the collective bargaining process would be assured.

A Better Bill.—A better bill than H.R. 16785 is obviously needed. The above are just some of what we believe are valid objections to this measure. There are other important problems, such as: the inequities of the posting requirements and the inadequate protection of trade secrets. The cumulative effects of all of these defects indicate that improvement of this legislation by amendment is not feasible. A complete substitute is necessary. A number of committee members are planning to take this step and we urge that their efforts be given support.

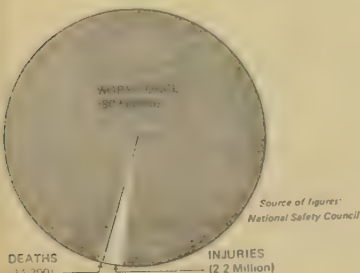
There are other matters developed during the hearing that need decisions.

Safety in America Today.—During the hearings we became deeply concerned over the status of safety in America today. Charges of "on the job slaughter" of the American worker were alleged. Businessmen were portrayed as villains, reaping profits through the abuse of employees.

The facts do not support this picture.

Statistics gathered by the National Safety Council show that the average American is safer at his workplace than he is at home, on the highway, or at play. This is directly attributable to the fact that, for many decades, businessmen have worked hard to improve industrial safety and health conditions. They know they are dealing with the lives and limbs of other human beings. Moreover, they know that operating a safe shop is good business; production losses and medical and insurance costs are expensive by-products of on-the-job accidents, whereas accident prevention programs boost employee morale and promote efficiency.

The results of business' voluntary and continuing dedication to provide a safe workplace are dramatic. In 1912, an estimated 18,000 to 21,000 workers' lives were lost while producing \$100 billion worth of gross national product. In 1968, in a workforce more than double in size and producing over eight times as much, there were only 14,300 work deaths. The following chart traces the steady decline in the death rate over the years



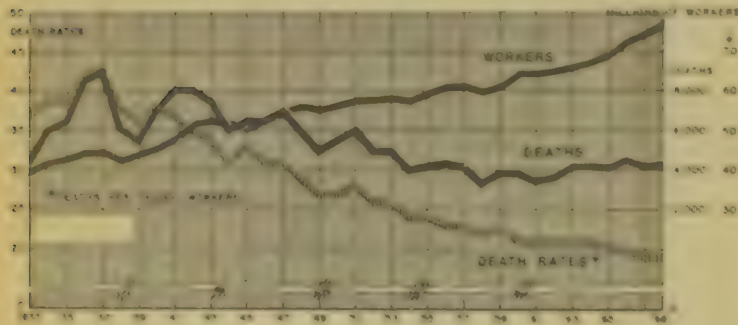
(Source: for statistics, National Safety Council, chart: Nation's Business, May 1970)

Likewise, during the last 40 years the frequency and severity rates of injuries have been drastically reduced. And while there has been some plateauing of industry's accident frequency record in recent years, it is generally conceded that this is to be expected during periods of highly increasing productivity and employment. Significantly, during the last two decades alone productivity has risen by 93.7 percent and employment has also been up sharply.

Finally, a look at the most recent year for which full statistics are available—1968—provides equally dramatic evidence as to why the safety record of American business has no equal anywhere in the world.

In 1968, there were 14,300 occupational fatalities and 2,200,000 occupational injuries (some were serious, but most were of a temporary nature) out of a total labor force of nearly 80 million people.*

The drawing below provides a visual illustration of how small the portions of the workforce injured or killed on the job in 1968 were:



(Source: Accident Facts, 1969 Edition)

Statistically, these injury and fatality experiences figure out, respectively, to an extremely low .0275 and an incredibly low .00018.

One accident, of course, is one too many. Greater improvements can and must be made. But these figures make it abundantly clear that American business owes no apology for its safety record, and deserves to be treated fairly in any legislation adopted.

A FEDERAL ROLE IS NEEDED

Notably, too, our present system is based on state-determined standards, adapted to local needs, consensus codes voluntarily agreed to by employers, education and cooperation. This pluralistic system has stimulated individual and local commitments and has been largely

*There were 4,000,000 non-union workers in the United States in 1968. Further, because some 100,000 federal government employees are covered by the Federal Employees Compensation Act, and some 100,000 are covered by the Federal Employees' Compensation Act, the total number of employees covered by the Federal Employees' Compensation Act is approximately 1,200,000. If these figures are added to the 4,000,000 non-union workers, the total number of employees covered by the Federal Employees' Compensation Act is approximately 5,200,000.

responsible for the splendid achievements to date. Logically, then, the most prudent and constructive way to attain still greater improvements would be to provide additional encouragement and support for these state, local and voluntary efforts. The federal role, in other words, should be a helping hand, rather than a stiff-arm. The value of such an approach was underscored for the Committee by many industrial safety experts. As a result of extensive personal experiences, these men know that safety cannot be legislated. Their testimony made clear that the cause of occupational injuries is some type of "people failure," rather than inadequate equipment or facilities. All too often the worker himself rebels at wearing safety shoes or hard hats, ignores the warning signs, and tries to beat the machine guards or removes them because they "get in the way."

Nor can we afford to close our eyes to the fact that authoritarian federalization of job safety may well have the opposite effect of that intended.

In Europe, for example, safety programs are nationalized. Yet the safety performance of American industry is far better. A British safety expert who compared the record of the United States to that of the United Kingdom found that the accident frequency rate of U.S. firms in each of the 17 industrial groupings compared was better than the accident rate in his own country. The record of our chemical companies, for example, was seven times better than that of similar British firms; and in the steel industry the accident frequency rate of U.S. firms was ten times better.

CONCLUSION

All of these considerations clearly seem to mandate that any federal legislation be a cautious and reasonable effort genuinely tailored to strengthen our present safety system through incentives and cooperation.

Recognition of this, significantly, was mirrored in the message President Nixon sent to the Congress on August 6, 1969 with his own proposal:

. . . The comprehensive Occupational Safety and Health Act . . . will correct some of the important deficiencies of earlier approaches . . . It will separate the function of setting safety and health standards from the function of enforcing them. Appropriate procedures to guarantee due process of law and the right to appeal will be incorporated. The proposal will also provide a flexible mechanism which can reach quickly to the new technologies of tomorrow.

Under the suggested legislation, maximum use will be made of standards established through a voluntary consensus of industry, labor, and other experts. No standard will be set until the views of all interested parties have been heard. This proposal would also encourage stronger efforts at the State level, sharing enforcement responsibility with states which have adequate programs. Greater emphasis will also be given to research and education, for the effects of modern technologies on the physical well-being of workers are complex and poorly understood . . .

(This legislation) . . . can do much to improve the environment of the American worker. But it will take much more than new government efforts if we are to achieve our objectives. Employers and employees alike must be committed to the prevention of accident and disease and alert to every opportunity for promoting that end. Together the private and public sectors can do much that we cannot do separately.

Regrettably, this philosophy has been rejected by the majority members of the Committee in favor of the authoritarian, penalty-oriented, "bull-in-the-china-shop" approach of H.R. 16785.

Admittedly, industrial accidents are tragic.

But to those who cherish constitutional due process—to those who know from long experience that job-safety and health programs developed in an uncoerced, cooperative context hold the best hope for continued progress—and to those who believe that American working men and women deserve more than an unworkable legislative deception—the Committee's action in approving H.R. 16785 is a tragedy without equal.

For these reasons, and the reasons set forth in the minority report, we must oppose H.R. 16785.

BILL SCHERLE.
JOHN M. ASHBROOK.
EDWIN D. ESHLEMAN.
JAMES M. COLLINS.
EARL F. LANDGREBE.
EARL B. RUTH.

SEPARATE AND CONCURRING VIEWS OF MR. BURTON

This bill represents a long-overdue significant additional recognition that working men and women need Federal assistance to secure their inalienable right to earn their living free from the ravages of job-caused death, disease and injury. This bill is also a testimonial to this Committee's faith that the formalization of standards and standard setting, coupled with enforcement, will bring a reduction in the high level of death, disease, and injury.

While I share the conviction that standard-setting and enforcement is an appropriate Federal responsibility, I am gravely concerned that this bill may not go far enough to reach and remove the root causes of the macabre facts of life in the working place. More specifically, I am convinced that most of the diseases and a substantial portion of deaths and injuries are not the result of worker carelessness, but are avoidable by management's exercise of preventative measures. Unfortunately, the costs of the necessary preventative measures appear, even in 1970, to exceed the costs to employers from the employee injuries which may occur without these expenditures. Therefore, until and unless the basic economics of these disasters are changed, nothing in the working place may change. Thus, with today's low level of Workmen's Compensation, preventative expenditures for better health and safety are often the employer's most expensive and uneconomic choice. In short, today's Workmen's Compensation laws and associated laws offer an economic incentive to many corporations to forbear from preventative expenditures because they have concluded that the costs of employee death and injury (potentially higher Workmen's Compensation, Health Insurance premiums, etc.) are often less than the costs of accident and disease prevention.

I believe that employers in every state should be able to invest in better safety and health and know that they are saving money for every death and injury which is prevented. At the very least, I believe that any employers who choose to spend funds for preventative safety and health measures should not be economically penalized for that decision. Employers in states with the higher levels of Workmen's Compensation payments should not be at an economic disadvantage with reference to employers obligated to pay far lower levels. Without this equality, and without a higher value on human life and health from higher Workmen's Compensation standards, an uncertain and unnecessary number of deaths and injuries will be occurring each year.

To achieve the goals of making safety and health economic and effective, the state levels of workmen's compensation should be adequate and relatively uniform. National, uniform, minimum standards of benefits, universal coverage, and comprehensive medical and related benefits appear to be the minimum initial commitment which working men and women should have as a matter of right. More specifically, any levels of workmen's compensation should be suffi-

cient to adequately sustain a widowed spouse or family otherwise incapable of support. The actual level of many State Workmen's Compensation payment programs portrays an obviously inadequate program both in terms of benefits and coverage. However, this portrayal is only the vague outline of the hundreds of thousands of cases of uncompensated loss to working men and women each year. Such losses are staggering in amount—both in their aggregate size and in their actual impact on workers' families. Such losses are particularly harsh when they fall on the majority of men and women who work without the benefit of a union and an adequate compensatory health plan. Such losses are unconscionable when they are the result of negligence by the employer for which the worker has no legal remedy in court.

I believe this bill must rapidly eliminate the source of these wrongs in the workplace by significantly lowering the incidence of death, disease, and injury. I will be reviewing the record of this progress carefully. If such a decrease in death, disease and injury does not rather rapidly take place and continue, *and* if the character of other rights of working men and women is not raised to a humane level by the states, then I believe this committee must adopt the additional, alternative, and more basic economic solutions I have suggested above.

PHILIP BURTON.



Union Calendar No. 614

91ST CONGRESS
2^D SESSION**H. R. 16785**

[Report No. 91-1291]

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1970

Mr. DANIELS of New Jersey (for himself, Mr. PERKINS, Mr. O'HARA, Mr. HATTAWAY, Mr. WILLIAM D. FORD, Mr. MEEDS, Mr. BURTON of California, Mr. GREEN of Oregon, Mr. HAWKINS, Mr. GAYDOS, Mr. THOMPSON of New Jersey, Mr. DENT, Mr. PUCINSKI, Mr. BRADEMAS, Mr. CAREY, Mrs. MINK, Mr. SCHEUER, Mr. STOKES, Mr. CLAY, and Mr. POWELL) introduced the following bill; which was referred to the Committee on Education and Labor

JULY 9, 1970

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*

1 That this Act may be cited as the "Occupational Safety and
2 Health Act";

3 **CONGRESSIONAL FINDINGS AND PURPOSE:**

4 Sec. 2: (a) The Congress finds that personal injuries
5 and illnesses arising out of work situations impose a sub-
6 stantial burden upon, and are a hindrance to, interstate com-
7 merce in terms of lost production, wage loss, medical ex-
8 penses, and disability compensation payments;

9 (b) The Congress declares it to be its purpose and
10 policy, through the exercise of its powers to regulate com-
11 merce among the several States and with foreign nations
12 and to provide for the general welfare, to assure so far as
13 possible every working man and woman in the Nation safe
14 and healthful working conditions and to preserve our human
15 resources—

16 (1) by encouraging employers and employees in
17 their efforts to reduce the number of occupational safety
18 and health hazards at their places of employment, and
19 to stimulate employers and employees to institute new
20 and to perfect existing programs for providing safe and
21 healthful working conditions;

22 (2) by building upon advances already made
23 through employer and employee initiative for providing
24 safe and healthful working conditions;

25 (3) by providing for research in the field of occupa-

1 tional safety and health, including the psychological
2 factors involved, and by developing innovative methods,
3 techniques and approaches for dealing with occupational
4 safety and health problems;

5 (4) by exploring ways to discover latent diseases,
6 establishing causal connections between diseases and
7 work in environmental conditions, and conducting other
8 research relating to health problems, in recognition of
9 the fact that occupational health standards present prob-
10 lems often different from those involved in occupational
11 safety;

12 (5) by providing for training programs to increase
13 the number and competence of personnel engaged in the
14 field of occupational safety and health;

15 (6) by providing for the development, promulga-
16 tion, and effective enforcement of occupational safety and
17 health standards;

18 (7) by encouraging the States to assume the fullest
19 responsibility for the administration and enforcement of
20 their occupational safety and health laws by providing
21 grants to the States to assist in identifying their needs
22 and responsibilities in the area of occupational safety
23 and health, to develop plans in accordance with the pro-
24 visions of this Act, to improve the administration and
25 enforcement of State occupational safety and health laws;

1 and to conduct experimental and demonstration projects
2 in connection therewith;

3 (8) by providing for appropriate accident and
4 health reporting procedures which will help achieve the
5 objectives of this Act and accurately describe the nature
6 of the occupational safety and health problem; and

7 (9) by encouraging joint labor-management efforts
8 to reduce injuries and disease arising out of employment.

9 DEFINITIONS

10 SEC. 3. For the purposes of this Act—

11 (1) The term "Secretary" means the Secretary of
12 Labor.

13 (2) The term "commerce" means trade, traffic, com-
14 merce, transportation, or communication among the several
15 States, or between a State and any place outside thereof, or
16 within the District of Columbia, or a possession of the United
17 States (other than a State as defined in paragraph (4) of
18 this subsection); or between points in the same State but
19 through a point outside thereof.

20 (3) The term "person" means one or more individuals,
21 partnerships, associations, corporations, business trusts, legal
22 representatives, or any organized group of persons.

23 (4) The term "employer" means a person engaged in
24 a business affecting commerce who has employees, but does
25 not include the United States or any State or political sub-
26 division of a State.

1 ~~(5)~~ The term "employee" means an employee of an
2 employer who is employed in a business of his employer
3 which affects commerce.

4 ~~(6)~~ The term "State" includes a State of the United
5 States, the District of Columbia, Puerto Rico, the Virgin
6 Islands, American Samoa, Guam, and the Trust Territory of
7 the Pacific Islands.

8 ~~(7)~~ The term "occupational safety and health stand-
9 ard" means a standard which requires conditions, or the
10 adoption or use of one or more practices, means, methods,
11 operations, or processes, reasonably necessary or appropriate
12 to provide safe or healthful employment and places of
13 employment.

14 ~~(8)~~ The term "national consensus standard" means any
15 occupational safety and health standard or modification
16 thereof which ~~(A)~~ has been adopted and promulgated by a
17 nationally recognized standards-producing organization under
18 procedures whereby it can be determined by the Secretary,
19 that persons interested and affected by the scope or
20 provisions of the standard have reached substantial agree-
21 ment on its adoption, ~~(B)~~ was formulated in a manner which
22 afforded an opportunity for diverse views to be considered,
23 and ~~(C)~~ has been designated as such a standard by the
24 Secretary, after consultation with other appropriate Federal
25 agencies.

(4) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.

APPLICABILITY OF ACT

Sec. 4. (a) This Act shall apply only with respect to employment performed in a workplace in a State; Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, or the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no Federal district courts having jurisdiction.

(b) (1) Nothing in this Act shall be deemed to repeal or modify any other Federal law prescribing safety or health requirements or the standards, rules, or regulations promulgated pursuant to such law.

(2) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

LETTERS OF EMPLOYMENT

Spice in the Kitchen

(1) shall furnish to each of his employees employment and a place of employment which is safe and healthful, and

(2) shall, except as provided in section 17, comply with occupational safety and health standards and with interim standards which are promulgated under this Act.

INTERIM SAFETY AND HEALTH STANDARDS

Sec. 6. The Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an interim standard, any national consensus standard, any established Federal standard then in effect (not limited to its present area of application); and any standard proposed by a nationally recognized standards-producing organization by other than a consensus method, unless he determines that the promulgation of such a standard as an interim standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees. No such standard shall be promulgated without a public hearing with respect thereto at which interested persons are afforded an opportunity to express their views; but in other respects section 553 of title

5, United States Code, shall be applicable in carrying out this section. Each interim standard shall stay in effect until superseded by another interim standard or until superseded pursuant to a rule issued and in effect under section 7. The Secretary shall commence (by appointing an advisory committee) a proceeding under section 7 for the promulgation of an occupational safety and health standard dealing with the same subject matter as each interim standard or standards, and any additional occupational safety or health issues he deems relevant, within ninety days after he promulgates such interim standard.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Sec. 7. (a) The Secretary may, by rule, promulgate, modify, or revoke any occupational safety and health standard in the following manner:

(1) Whenever the Secretary upon the basis of information submitted to him in writing by an interested person, a representative of an organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, a State, or a political subdivision of a State, or on the basis of information otherwise available to him, determines that such a rule should be prescribed in order to serve the objectives of this Act, and whenever he is required to do so by section 6, the Secretary shall appoint an advisory committee under section

1 8(b) of this Act, which shall submit to him its recommenda-
2 tions regarding the rule to be prescribed which will carry out
3 the purposes of this Act; which recommendations shall be
4 published by him in the Federal Register, either as part of a
5 subsequent notice of proposed rulemaking or separately. The
6 recommendations of an advisory committee shall be sub-
7 mitted to the Secretary within two hundred and seventy days
8 from its appointment, or within such longer or shorter period
9 as may be prescribed by the Secretary; but in no event may
10 he prescribe a period which is longer than one year and
11 three months.

12 (2) After the submission of such recommendations, the
13 Secretary shall, as soon as practicable and in any event
14 within four months, schedule and give notice of a hearing on
15 the recommendations of the advisory committee and any
16 other relevant subjects and issues. In the event that the
17 advisory committee fails to submit recommendations within
18 two hundred and seventy days from its appointment (or
19 such longer or shorter period as the Secretary has prescribed)
20 the Secretary shall make a proposal relevant to the purpose
21 for which the advisory committee was appointed, and shall
22 within four months schedule and give notice of hearing
23 thereon. In either case, notice of the time, place, subjects,
24 and issues of any such hearing shall be published in the Fed-

1 and Register thirty days prior to the hearing and shall con-
2 tain the recommendations of the advisory committee or the
3 proposal made in absence of such recommendations. Prior to
4 the hearing interested persons shall be afforded an oppor-
5 tunity to submit comments upon any recommendations of
6 the advisory committee or other proposal. Only persons who
7 have submitted such comments shall have a right at such
8 hearing to submit oral arguments, but nothing herein shall
9 be deemed to prevent any person from submitting written
10 evidence, data, views, or arguments.

11 (2) Upon the entire record before him, including the
12 advisory committee recommendations and any evidence, data,
13 views and arguments submitted in connection with the hear-
14 ing, the Secretary shall within sixty days after completion
15 of the hearing issue a rule promulgating, modifying, or re-
16 voking an occupational safety and health standard or make
17 a determination that a rule should not be issued. Such a
18 rule may contain a provision delaying its effective date
19 for such period (not in excess of ninety days) as the Secre-
20 tary determines may be appropriate to insure that affected
21 employers and employees will be informed of the existence
22 of the standard and of its terms and that employers affected
23 are given an opportunity to familiarize themselves and their
24 employees with the requirements of the standard.

25 (b) Any affected employer may apply to the Secretary

1 for a rule or order for an exemption from clause (2) of sec-
2 tion 5: Affected employees shall be given notice of each such
3 application and an opportunity to participate in a hearing.
4 The Secretary shall issue such rule or order if he determines
5 on the record, after an opportunity for an inspection and a
6 hearing, that the proponent of the exemption has demon-
7 strated by a preponderance of the evidence that the condi-
8 tions, practices, means, methods, operations, or processes used
9 or proposed to be used by an employer will provide employ-
10 ment and places of employment to his employees which are as
11 safe and healthful as those which would prevail if he com-
12 plied with the standard. The rule or order so issued shall
13 prescribe the conditions the employer must maintain, and
14 the practices, means, methods, operations, and processes
15 which he must adopt and utilize to the extent they differ
16 from the standard in question. Such a rule or order may be
17 modified or revoked upon application by an employer, em-
18 ployees, or by the Secretary on his own motion in the
19 manner prescribed for its issuance under this subsection at
20 any time after six months after its issuance.

21 (c) Whenever the Secretary promulgates any standard,
22 makes any rule, order, decision, grants any exemption or
23 extension of time, or compromises, mitigates, or settles any
24 penalty assessed under this Act, he shall include a statement

1 of the reasons for such action, and such statement shall be
2 published in the Federal Register.

3 ADMINISTRATION: ADVISORY COMMITTEES

4 SEC. 8. (a) In carrying out his responsibilities under
5 this Act, the Secretary is authorized to—

6 (1) use, with the consent of any Federal agency,
7 the services, facilities, and employees of such agency
8 with or without reimbursement, and with the consent of
9 any State or political subdivision thereof, accept and
10 use the services, facilities, and employees of the agencies
11 of such State or subdivision with reimbursement; and

12 (2) employ experts and consultants or organiza-
13 tions thereof as authorized by section 3109 of title 5,
14 United States Code, except that contracts for such
15 employment may be renewed annually; compensate indi-
16 viduals so employed at rates not in excess of the rate
17 specified at the time of service for grade GS-18 in section
18 5332 of title 5, United States Code, including traveltime;
19 and allow them while away from their homes or regular
20 places of business, travel expenses (including per diem in
21 lieu of subsistence) as authorized by section 5703 of title
22 5, United States Code, for persons in the Government
23 service employed intermittently, while so employed.

24 (b) The Secretary shall appoint advisory committees to
25 recommend occupational safety and health standards under

1 section 7(a) of this Act before the commencement of pro-
2 ceedings thereunder. Each such advisory committee shall
3 consist of not more than fifteen members and shall include
4 as a member one or more designees of the Secretary of
5 Health, Education, and Welfare, and shall include among
6 its members an equal number of persons qualified by experi-
7 ence and affiliation to present the viewpoint of the employers
8 involved, and of persons similarly qualified to present the
9 viewpoint of the workers involved, as well as one or more
10 representatives of health and safety agencies of the States.
11 An advisory committee may also include such other persons
12 as the Secretary may appoint who are qualified by knowledge
13 and experience to make a useful contribution to the work of
14 the committee, including one or more representatives of pro-
15 fessional organizations of technicians or professionals special-
16 izing in occupational safety or health, and one or more repre-
17 sentatives of nationally recognized standards-producing or-
18 ganizations, but the number of persons so appointed to any
19 advisory committee shall not exceed the number appointed
20 to such committee as representatives of Federal and State
21 agencies. Persons appointed to advisory committees from
22 private life shall be compensated in the same manner as con-
23 sultants or experts under subsection (a)-(2) of this section.
24 The Secretary shall pay to any State which is the employer
25 of a member of the committee who is a representative of

1 the health or safety agency of that State, reimbursement suf-
2 ficient to cover the actual cost to the State resulting from
3 such representative's membership on the committee. Any
4 meeting of the committee shall be open to the public and an
5 accurate record shall be kept and made available to the
6 public. No member of the committee (other than representa-
7 tives of employers and employees) shall have an economic
8 interest in any proposed rule.

9 (c)(11) The Secretary and the Secretary of Health,
10 Education, and Welfare shall appoint a National Advisory
11 Committee on Occupational Safety and Health (hereafter in
12 this subsection referred to as the "Committee"). The Com-
13 mittee shall consist of twenty members appointed without
14 regard to the civil service laws and composed equally of rep-
15 resentatives of management, labor, occupational safety and
16 occupational health professions, and of the public. The Sec-
17 retary shall appoint all members of the Committee except for
18 occupational health representatives who shall be appointed
19 by the Secretary of Health, Education, and Welfare. The
20 Secretary shall designate one of the public members as Chair-
21 man. The members shall be selected upon the basis of their
22 experience and competence in the field of occupational safety
23 and health.

24 (12) The Committee shall advise, consult with, and make
25 recommendations to, the Secretaries of Labor and Health,

1 Education, and Welfare on matters relating to the imple-
2 mentation of this Act. The Committee shall hold no fewer
3 than two meetings during each calendar year. All meetings of
4 the Committee shall be open to the public and a transcript
5 shall be kept and made available for public inspection.

6 (3) The members of the Committee shall be compen-
7 sated in accordance with the provisions of subsection (a) (2)
8 of this section.

9 (4) The Secretary shall furnish to the Committee an
10 executive secretary and such secretarial, clerical, and other
11 services as are deemed necessary to the conduct of its
12 business.

13 INSPECTIONS, INVESTIGATIONS, AND REPORTS

14 SEC. 9. (a) In order to carry out the purposes of this
15 Act, the Secretary, upon presenting appropriate credentials
16 to the owner, operator, or agent in charge, is authorized—

17 (1) to enter upon at reasonable times any work-
18 place where work is performed to which this Act ap-
19 plies; and

20 (2) to inspect and investigate during regular work-
21 ing hours and at other reasonable times, and within
22 reasonable limits and in a reasonable manner, any such
23 place and all pertinent conditions, structures, machines,
24 apparatus, devices, equipment, and materials therein, and

to question any such employer, owner, operator, agent
or employee.

(b) For the purposes of any investigation provided for
in this title, the provisions of sections 9 and 10 (relating to
the attendance of witnesses and the production of books,
papers, and documents) of the Federal Trade Commission
Act of September 16, 1914 (45 U.S.C. 49, 50), are hereby
made applicable to the jurisdiction, powers, and duties of
the Secretary or any officers designated by him.

(c) Each employer shall make, keep, and preserve
and make available to the Secretary such record of his activi-
ties concerning the requirements of this Act, and shall make
reports therefrom to the Secretary, as he may prescribe by
regulation or order as necessary or appropriate for the en-
forcement of this Act. The Secretary shall also make such
regulations as may be necessary to assure that employers
keep their employees continuously informed of their rights,
privileges, and obligations under this Act. The Secretary in
cooperation with the Secretary of Health, Education, and
Welfare shall make regulations requiring employers to keep
records of all work related injuries, diseases, and ailments
which arise from conditions present in the working
environment.

(d) Any information obtained by the Secretary, the
Secretary of Health, Education, and Welfare, or a State

1 agency under this Act shall be obtained with a minimum
2 burden upon employers, especially those operating small
3 businesses. Unnecessary duplication of efforts in obtaining
4 information shall be reduced to the maximum extent feasible.

5 (e) A representative of the employer and a representa-
6 tive authorized by his employees shall be given an opportu-
7 nity to accompany any person who is making an inspection
8 under subsection (a) of any workplace.

9 CITATIONS FOR VIOLATIONS

10 SEC. 10. (a) If, upon inspection or investigation, the
11 Secretary determines that an employer has violated clause
12 (2) of section 5, any rule or order issued under section 7(b),
13 or any regulation prescribed under section 9(c), and that a
14 serious danger potential exists by reason of any such violation,
15 he shall issue a citation forthwith to the employer for such
16 violation. Each such citation shall (1) be in writing, (2)
17 describe with particularity the nature of the violation, in-
18 cluding a reference to the provision of the standard, rule,
19 order, or regulation alleged to have been violated, and (3)
20 the period of time within which it must be corrected.

21 (b) If, upon inspection or investigation, the Secretary
22 determines that an employer has violated clause (1) of sec-
23 tion 5 and a serious danger potential exists, or has violated
24 any regulation prescribed under section 9(c) or any rule or

1 order issued under section 7(b), but that no serious danger
2 potential exists by reason of such violation, he shall issue a
3 citation forthwith to the employer for such violation. Each
4 such citation shall (1) be in writing; (2) describe with par-
5 ticularity the nature of the violation, including a reference
6 to the provision of the standard, duty, rule, order, or regula-
7 tion alleged to have been violated; and (3) the period of
8 time within which it must be corrected.

9 (c) If, upon inspection or investigation, the Secretary
10 determines that an employer has violated clauses (1) or (2)
11 of section 5; and specifically determines, together with his
12 reasons, that no serious danger potential exists by reason of
13 such violation, he shall issue a citation forthwith to the
14 employer for such violation. Each such citation shall (1) be
15 in writing; (2) describe with particularity the nature of the
16 violation, including a reference to the provision of the stand-
17 ard, rule, order, duty, or regulation alleged to have been
18 violated.

19 (d) Where a citation is issued under subsection (a) or
20 (b) for a violation which might cause cumulative or latent ill
21 effects, such citation shall specify, where feasible, a period
22 during which employers shall accurately measure the expo-
23 sure of employees to such danger.

24 (e) Each citation issued under this section or a copy
25 or copies thereof shall be prominently posted (as prescribed

1 in regulations made under section 9(c)- at or near each
2 place a violation referred to in the citation occurred.

3 (f) For purposes of this Act a "serious danger
4 potential" shall be deemed to exist in a place of employ-
5 ment if there is a substantial probability that at any time
6 death or serious physical harm could result from a condition
7 which exists, or from one or more practices, means, methods,
8 operations, or processes which have been adopted or are
9 in use, in such place of employment.

10 PROCEDURES FOR ENFORCEMENT

11 SEC. 11. (a) If, after an inspection or investigation,
12 the Secretary issues a citation under section 10 (a) or (b),
13 the Secretary shall, within ten working days of the termina-
14 tion of such inspection or investigation, notify the employer
15 by certified mail of the penalty, if any, proposed to be
16 assessed under section 15 and that he has fifteen working
17 days within which to notify the Secretary that he wishes
18 to contest the citation or proposed assessment of penalty. If
19 such notice is not issued by the Secretary within such ten-
20 day period then such citation and proposed assessment of
21 penalty shall be void. If, within fifteen working days from
22 the receipt of such a notice, the employer fails to notify
23 the Secretary that he intends to contest the citation or pro-
24 posed assessment of penalty, the citation and the assessment,
25 as proposed, shall be final and not subject to review by any

1 court or agency, and for purposes of subsection (c) shall be
2 considered an order issued by the Secretary under subsection
3 (1+);

4 (1+) If an employer notifies the Secretary that he intends
5 to contest a citation issued under section 10 (a) or (1+)
6 or proposed assessment of penalty or if the Secretary
7 determines an employer has failed to correct a violation for
8 which such a citation has been issued within the period per-
9 mitted for its correction (which period shall not begin to
10 run until the termination of proceedings under this subsec-
11 tion), the Secretary shall afford an opportunity for a hearing
12 (in accordance with section 554 of title 5, United States
13 Code, but without regard to subsection (a)(3) of such sec-
14 tion), and shall, if he determines such citation is valid, issue
15 an order, based on findings of fact, confirming, denying, or
16 modifying the citation or assessment of penalty; or, if he de-
17 termines the employer has failed to correct such violation
18 within such period, issue such orders, based on findings of
19 fact, as may be necessary for the correction of the violation
20 for which the citation was issued, and for the assessment
21 and collection of any penalty under section 10 (a), (1+),
22 or (c). The Secretary shall give such person the information
23 required by section 554 (1+) of such title at least fifteen days
24 prior to hearing. In proceedings under this subsection, the
25 Secretary shall consider, among other things, the validity

1 of any standard, rule, order, or regulation alleged to have
2 been violated, and the reasonableness of the period of time
3 permitted for the correction of the violation. For purposes
4 of this subsection, an employer shall not be deemed to have
5 violated a citation issued for a violation of clause (1) of sec-
6 tion 5 where a serious danger potential exists if the employer
7 is in compliance with an applicable interim standard, occu-
8 pational health or safety standard, or State plan applicable
9 under section 17(e).

10 (e) The Secretary shall have power, upon issuance
11 of an order under subsection (b), to petition any United
12 States district court within the district where a viola-
13 tion is alleged to have occurred or where the employer has
14 its principal office, for appropriate relief. The United States
15 district courts shall have jurisdiction to enforce (by re-
16 straining order, injunction, or otherwise) any order
17 of the Secretary issued under subsection (b). Except in
18 the case of an order which has become final under section
19 11(a), any person adversely affected or aggrieved by an
20 order of the Secretary issued under subsection (b) may
21 obtain review of such order by the United States district court
22 for the district where the violation is alleged to have occurred
23 or where the employer has its principal office by filing in such
24 court within thirty days following the issuance of such order
25 a petition praying that the action of the Secretary be modified

1 or set aside in whole or in part. A petition for review by
2 the court shall not stay an order of the Secretary under sub-
3 section (b) unless otherwise provided by the court.

4 ~~PROCEDURES TO COUNTERACT IMMINENT DANGERS~~

5 SEC. 12. (a) If an inspection or investigation of a
6 place of employment discloses that imminent danger
7 potential exists in such place of employment, the Secretary
8 may issue an order prohibiting the employment or presence
9 of any individuals in locations or under conditions where
10 such an imminent danger potential exists, except to correct
11 or remove it. Such order may remain in effect for not more
12 than five days from the date of its issuance.

13 (b) If, upon inspection or investigation of a place of
14 employment, the Secretary determines that an imminent
15 danger potential exists in such place of employment, the
16 Secretary may bring a civil action in the United States dis-
17 trict court for the district where the imminent danger poten-
18 tial exists or where the employer has its principal office for
19 a temporary restraining order or injunction prohibiting the
20 employment or presence of any individual in locations or
21 under conditions where such an imminent danger potential
22 exists, except to correct or remove it. An action may be
23 brought under this subsection while an order of the Secre-
24 tary under subsection (a) is in effect. If in a proceeding
25 under section 14, it is finally determined that any condition

1 which existed, or any practice, means, method, operation,
2 or process which was adopted or in use in a place of employ-
3 ment did not violate section 5, and it was upon the basis
4 of the existence of such condition or the adoption of such
5 practice, means, method, operation, or process that an order
6 was issued under this subsection, then such order shall no
7 longer be in effect.

8 (c) If the Secretary arbitrarily or capriciously issues
9 or fails to issue an order under subsection (a) and any
10 person is injured thereby either physically or financially by
11 reason of such order or failure to issue such order, such
12 person may bring an action against the United States in the
13 Court of Claims in which he may recover the damages he
14 has sustained, including reasonable court costs and attorneys'
15 fees.

16 (d) For purposes of this section an imminent danger
17 potential shall be deemed to exist in a place of employment
18 if such danger could reasonably be expected to cause death
19 or serious physical harm before the imminence of such danger
20 can be eliminated.

21 REPRESENTATION IN CIVIL LITIGATION

22 SEC. 13. Except as provided in section 512(a) of title
23 28, United States Code, relating to litigation before the
24 Supreme Court and the Court of Claims, the Solicitor of
25 Labor may appear for and represent the Secretary in any

1 civil litigation brought under this Act but all such litigation
2 shall be subject to the direction and control of the Attorney
3 General.

4 CONFIDENTIALITY OF TRADE SECRETS

5 Sec. 14. All information reported to or otherwise ob-
6 tained by the Secretary or his representative in connection
7 with any inspection or proceeding under this Act which con-
8 tains or which might reveal a trade secret referred to in
9 section 1905 of title 18 of the United States Code shall be
10 considered confidential for the purpose of that section, except
11 that such information may be disclosed to other officers or
12 employees concerned with carrying out this Act or when
13 relevant in any proceeding under this Act.

14 PENALTIES

15 Sec. 15: (a) Any employer who (1) receives a citation
16 under section 10(a); (2) fails to correct a violation for
17 which a citation has been issued under section 10(a) within
18 the period permitted for its correction (which period shall
19 not begin to run until the termination of any proceedings
20 under section 11(b) 1; or (3) violates an order issued under
21 section 12(a); shall be assessed by the Secretary, pursuant
22 to an order issued under section 14(b), a civil penalty of
23 not more than \$1,000 for each violation. Each violation shall
24 be a separate offense. When the violation is of a continuing
25 nature, each day during which it continues after a reasonable

1 time specified in an initial decision following the hearing
2 held under section 11(b) shall constitute a separate offense
3 except during the time a review of the order under section
4 11(b) may be taken, or such review is pending and during
5 the time allowed in the order under section 11(b) for cor-
6 rection. The Secretary may compromise, mitigate, or settle
7 any claim for civil penalties. In assessing the penalty con-
8 sideration shall be given to the appropriateness of the
9 penalty, to the size of the business of the person charged, to
10 the gravity of the violation, and to the history of previous
11 violations.

12 (b) Any employer who receives a citation under section
13 10(b), or fails to correct a violation for which a citation has
14 been issued under section 10(b) within the time prescribed
15 for its correction (which period shall not begin to run until
16 the termination of any proceedings under section 11(b)),
17 may be assessed by the Secretary, pursuant to an order
18 issued under section 11(b), a civil penalty of not more
19 than \$1,000 for each violation. Each violation shall be
20 a separate offense. When the violation is of a continuing
21 nature, each day during which it continues after a reasonable
22 time specified in an initial decision following the hearing held
23 under section 11(b) shall constitute a separate offense except
24 during the time a review of the order under section 11(b)

1 may be taken, or such review is pending and during the time
2 allowed in the order under section 44 (b) for correction. The
3 Secretary may compromise, mitigate, or settle any claim for
4 civil penalties. In assessing the penalty consideration shall
5 be given to the appropriateness of the penalty; to the size of
6 the business of the person charged; to the gravity of the viola-
7 tion; and to the history of previous violations.

8 (c) Any employer who willfully violates any standard
9 promulgated under sections 6 and 7 of this Act may be as-
10 sessed by the Secretary, pursuant to an order issued under
11 section 44 of this Act, a civil penalty of not more than
12 \$10,000 for each violation. In assessing the penalty, con-
13 sideration shall be given to the appropriateness of the penalty
14 to the size of the business of the person charged; to the
15 gravity of the violation; and to the history of previous
16 violations.

17 (d) Any person who forcibly assaults, resists, opposes,
18 impedes, intimidates, or interferes with any person while
19 engaged in or on account of the performance of inspections
20 or investigatory duties under this Act shall be fined not more
21 than \$5,000 or imprisoned not more than three years, or
22 both. Whoever, in the commission of any such acts, uses a
23 deadly or dangerous weapon, shall be fined not more than
24 \$10,000 or imprisoned not more than ten years or both.
25 Whoever kills any person while engaged in or on account of

1 the performance of inspecting or investigating duties under
2 this Act shall be punished by imprisonment for any term
3 of years or for life.

4 (c) Advance notice may be given of investigations
5 necessary for the Secretary and the Secretary of Health,
6 Education, and Welfare to effectively obtain, utilize, or
7 disseminate information relating to health or safety condi-
8 tions, the causes of accidents, diseases, and physical impair-
9 ments; however, any person who gives advance notice of
10 any inspection to be conducted under this Act shall be fined
11 not more than \$1,000 or imprisoned not more than one
12 year, or both.

13 VARIATIONS, TOLERANCES, AND EXEMPTIONS

14 SEC. 16. The Secretary may provide such reasonable
15 limitations and may make such rules and regulations allow-
16 ing reasonable variations, tolerances, and exemptions to and
17 from any or all provisions of this Act as he may find neces-
18 sary and proper to avoid serious impairment of the national
19 defense. Such action shall not be in effect for more than
20 six months without notification to affected employees and
21 an opportunity being afforded for a hearing.

22 STATE JURISDICTION AND STATE PLANS

23 SEC. 17. (a) Nothing in this Act shall prevent any
24 State agency or court from asserting jurisdiction under State

1 how over any occupational safety or health issue with respect
2 to which no standard is in effect under section 6 or 7.

3 (b) Any State which, at any time, desires to assume
4 responsibility for development and enforcement therein
5 of occupational safety and health standards relating to any
6 occupational safety or health issue with respect to which
7 a Federal standard has been promulgated under section 7
8 shall submit a State plan for the development of such stand-
9 ards and their enforcement;

10 (c) The Secretary shall approve the plan submitted by
11 a State under subsection (b); or any modification thereof;
12 if such plan in his judgment—

13 (1) designates a State agency or agencies as the
14 agency or agencies responsible for administering the plan
15 throughout the State;

16 (2) provides for the development and enforcement
17 of safety and health standards relating to one or more
18 safety or health issues, which standards (and the enforce-
19 ment of which standards) are or will be at least as
20 effective in providing safe and healthful employment and
21 places of employment as the standards promulgated un-
22 der section 7 which relate to the same issues;

23 (3) provides for a right of entry and inspection of
24 all workplaces subject to the Act which is at least as

1 effective as that provided in section 9(a)(1), and in-
2 cludes a prohibition on advance notice of inspections;

3 (4) contains satisfactory assurances that such
4 agency or agencies have or will have the legal authority
5 and qualified personnel necessary for the enforcement of
6 such standards;

7 (5) gives satisfactory assurances that such State will
8 devote adequate funds to the administration and enforce-
9 ment of such standards;

10 (6) makes all standards included under the plan ap-
11 plicable to all employees of public agencies of the State
12 and its political subdivisions;

13 (7) requires employers in the State to make reports
14 to the Secretary in the same manner and to the same ex-
15 tent as if the plan were not in effect; and

16 (8) provides that the State agency will make such
17 reports to the Secretary in such form and containing
18 such information as the Secretary shall from time to time
19 require;

20 (d) If the Secretary rejects a plan submitted under
21 subsection (b), he shall afford the State submitting the plan
22 due notice and opportunity for a hearing before so doing.

23 (e) After the Secretary approves a State plan submitted
24 under subsection (b), he may, but shall not be required to,

1 exercise his authority under sections 9, 10, 11, and 12 with
2 respect to comparable standards promulgated under section
3 7, for the period specified in the next sentence. The Secre-
4 tary may exercise the authority referred to above until he
5 determines, on the basis of actual operations under the State
6 plan, that the criteria set forth in subsection (c) are being
7 applied, but he shall not make such determination for at least
8 three years after the plan's approval under subsection (c).
9 Upon making the determination referred to in the preceding
10 sentence, the provisions of sections 9(2), 9 (except for
11 purposes of carrying out subsection (c)), 10, 11, and 12
12 and standards promulgated under section 7 of this Act, shall
13 not apply with respect to any occupational safety or health
14 issues covered under the plan, but the Secretary may retain
15 jurisdiction under the above provisions in any proceeding
16 commenced under section 10 or 11 before the date of
17 determination.

18 (c) The Secretary shall, on the basis of reports sub-
19 mitted by the State agency and his own inspections make a
20 continuing evaluation of the manner in which each State
21 having a plan approved under this section is carrying out
22 such plan. Whenever the Secretary finds, after affording
23 due notice and opportunity for a hearing, that in the implemen-
24 tation of the State plan there is a failure to comply sub-
25 stantially with any provision of the State plan (or any asso-

1 once contained therein), he shall notify the State agency of
2 his withdrawal of approval of such plan and upon receipt
3 of such notice such plan shall cease to be in effect, but the
4 State may retain jurisdiction in any case commenced before
5 the withdrawal of the plan in order to enforce standards under
6 the plan whenever the issues involved do not relate to the
7 reasons for the withdrawal of the plan.

8 (g) The State may obtain a review of a decision of the
9 Secretary withdrawing approval of or rejecting its plan by
10 the United States court of appeals for the circuit in which
11 the State is located by filing in such court within thirty days
12 following receipt of notice of such decision a petition praying
13 that the action of the Secretary be modified or set aside in
14 whole or in part. A copy of such petition shall forthwith be
15 served upon the Secretary, and thereupon the Secretary
16 shall certify and file in the court the record upon which the
17 decision complained of was issued as provided in section
18 2442 of title 28, United States Code. Unless the court finds
19 that the Secretary's decision in rejecting a proposed State
20 plan or withdrawing his approval of such a plan to be arbitrary and capricious, the court shall affirm the Secretary's
21 decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title
22
23
24
25 28, United States Code.

FEDERAL AGENCY SAFETY PROGRAMS AND
RESPONSIBILITIES

SEC. 18. (a) It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 7. The head of each agency shall (after consultation with representatives of the employees thereof)—

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 7;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action; and

(4) make an annual report to the Secretary with respect to occupational accidents and injuries, and the agency's program under this section. Such report shall include any report submitted under section 7902(c)(4) (7) of title 5, United States Code.

(c) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a) (4) of this section, together with his evaluations of and

1 recommendations derived from such reports. The President
2 shall transmit annually to the Senate and House of Repre-
3 sentatives a report of the activities of Federal agencies under
4 this section.

5 (c) Section 7902 (c) (1) of title 5, United States Code
6 is amended by inserting after "agencies" the following: "and
7 of labor organizations representing employees".

8 RESEARCH AND RELATED ACTIVITIES

9 SEC. 10. (a) (1) The Secretary of Health, Education,
10 and Welfare, after consultation with the Secretary and with
11 other appropriate Federal departments or agencies, shall con-
12 duct (directly or by grants or contracts) research, experi-
13 ments, and demonstrations relating to occupational safety
14 and health, including studies of psychological factors in-
15 volved, and relating to innovative methods, techniques, and
16 approaches for dealing with occupational safety and health
17 problems.

18 (2) The Secretary of Health, Education, and Welfare
19 shall from time to time consult with the Secretary in order
20 to develop specific plans for such research, demonstrations,
21 and experiments as are necessary to produce criteria enabling
22 the Secretary to meet his responsibility for the formulation of
23 safety and health standards under this Act; and the Secretary
24 of Health, Education, and Welfare, on the basis of such re-

1 search, demonstrations, and experiments and any other in-
2 formation available to him, shall develop and publish at
3 least annually such criteria which if applied will assure that
4 no employee will suffer diminished health or life expectancy
5 as a result of his work experience.

6 (3) The Secretary of Health, Education, and Welfare
7 shall also conduct special research, experiments, and demon-
8 strations relating to occupational safety and health as are
9 necessary to explore new problems, including those created
10 by new technology in occupational safety and health, which
11 may require ameliorative action beyond that which is other-
12 wise provided for in the operating provisions of this Act.
13 The Secretary of Health, Education, and Welfare shall also
14 conduct research into the motivational and behavioral factors
15 relating to the field of occupational safety and health.

16 (4) The Secretary, in conjunction with the Secretary of
17 Health, Education, and Welfare shall as soon as practicable
18 develop procedures to assure that all exposure to ambient
19 dangers to health or safety is accurately measured and
20 recorded by employers with results and means of measure-
21 ment promptly made available to employees at intervals
22 frequent enough to assure that no employee unknowingly
23 suffers exposure in excess of levels which could constitute a
24 danger to his safety or health.

25 (5) The Secretary of Health, Education, and Welfare

1 shall publish within six months of enactment of this Act
2 and thereafter as needed but at least annually a list of all
3 known or potentially toxic substances and the concentrations
4 at which such toxicity is known to occur; and shall deter-
5 mine following a request by any employer or authorized
6 representative of any group of employees whether any sub-
7 stance normally found in the working place has potentially
8 toxic or harmful effects in such concentration as used or
9 found; and shall submit such determination both to em-
10 ployers and affected employees as soon as possible. Within
11 sixty days of such determination by the Secretary of Health,
12 Education, and Welfare of potential toxicity of any substance,
13 an employer shall not require any employee to be exposed
14 to such substance designated above in toxic or greater con-
15 centrations unless it is accompanied by information, made
16 available to employees, by label or other appropriate means,
17 of the known hazards or toxic or long-term ill effects, the
18 nature of the substance, and the signs, symptoms, emer-
19 gency treatment, and proper conditions and precautions of
20 safe use, and personal protective equipment is supplied
21 which allows established work procedures to be performed
22 with such equipment, or unless such exposed employee may
23 absent himself from such risk of harm for the period nec-
24 essary to avoid such danger without loss of regular com-
25 pensation for such period.

1 with other appropriate Federal departments and agencies,
2 shall conduct, directly or by grants or contracts (1) educa-
3 tion programs to provide an adequate supply of qualified
4 personnel to carry out the purposes of this Act, and (2) in-
5 formational programs on the importance of and proper use
6 of adequate safety and health equipment.

7 (b) The Secretary is also authorized to conduct (di-
8 rectly or by grants or contracts) short-term training of
9 personnel engaged in work related to his responsibilities under
10 this Act.

11 (c) The Secretary, in consultation with the Secretary
12 of Health, Education, and Welfare, shall provide for the
13 establishment and supervision of programs for the education
14 and training of employers and employees in the recognition,
15 avoidance, and prevention of unsafe or unhealthful working
16 conditions in employments covered by this Act, and to con-
17 sult with and advise employers and employees, and organiza-
18 tions representing employers and employees as to effective
19 means of preventing occupational injuries and illnesses.

20 GRANTS TO THE STATES

21 SEC. 21. (a) The Secretary is authorized, during the
22 fiscal year ending June 30, 1971, and the two succeeding
23 fiscal years, to make grants to the States which have desig-
24 nated a State agency under section 17(c) to assist them
25 (1) in identifying their needs and responsibilities in the area

1 of occupational safety and health; (2) in developing State
2 plans under section 17, or (3) in developing plans for—

3 (A) establishing systems for the collection of infor-
4 mation concerning the nature and frequency of occupa-
5 tional injuries and diseases;

6 (B) increasing the expertise and enforcement capa-
7 bilities of their personnel engaged in occupational safety
8 and health programs; or

9 (C) otherwise improving the administration and
10 enforcement of State occupational safety and health laws,
11 including standards thereunder, consistent with the objec-
12 tives of this Act.

13 (b) The Secretary is authorized, during the fiscal year
14 ending June 30, 1971, and the two succeeding fiscal years, to
15 make grants to the States for experimental and demonstra-
16 tion projects consistent with the objectives set forth in sub-
17 section (a) of this section.

18 (c) The Governor of the State shall designate the appro-
19 priate State agency, or agencies, for receipt of any grant
20 made by the Secretary under this section.

21 (d) Any State agency, or agencies, designated by the
22 Governor of the State, desiring a grant under this section
23 shall submit an application therefor to the Secretary.

24 (e) The Secretary shall review the application, and

1 shall, after consultation with the Secretary of Health, Edu-
2 cation, and Welfare, approve or reject such application.

3 (f) The Federal share for each State grant under sub-
4 section (a) or (b) of this section may be up to 90 per
5 centum of the State's total cost. In the event the Federal
6 share for all States under either such subsection is not the
7 same, the differences among the States shall be established
8 on the basis of objective criteria.

9 (g) The Secretary is authorized to make grants to the
10 States to assist them in administering and enforcing pro-
11 grams for occupational safety and health contained in State
12 plans approved by the Secretary pursuant to section 17 of
13 this Act. The Federal share for each State grant under this
14 subsection may be up to 50 per centum of the State's total
15 cost. The last sentence of subsection (f) shall be applicable
16 in determining the Federal share under this subsection.

17 (h) Prior to June 30, 1973, the Secretary shall, after
18 consultation with the Secretary of Health, Education, and
19 Welfare, transmit a report to the President and to Congress,
20 describing the experience under the program and making
21 any recommendations he may deem appropriate.

22 EFFECT ON OTHER LAWS

23 SEC. 22. Nothing in this Act shall be construed or held
24 to supersede or in any manner affect any workmen's com-

1 for transmittal to the Congress a report upon the subject
2 matter of this Act, the progress concerning the achieve-
3 ment of its purposes, the needs and requirements in the field
4 of occupational safety and health, and any other relevant
5 information, and including any recommendations to effectuate
6 the purposes of this Act.

7 APPROPRIATIONS

8 SEC. 25. There are authorized to be appropriated to
9 carry out this Act for each fiscal year such sums as the
10 Congress shall deem necessary.

11 EFFECTIVE DATE

12 SEC. 26. This Act shall take effect on the first day of
13 the first month which begins more than thirty days after the
14 date of its enactment.

15 SEPARABILITY

16 SEC. 27. If any provision of this Act, or the application
17 of such provision to any person or circumstance, shall be held
18 invalid, the remainder of this Act, or the application of such
19 provision to persons or circumstances other than those as
20 to which it is held invalid, shall not be affected thereby.

21 *That this Act may be cited as the "Occupational Safety and*
22 *Health Act".*

23 CONGRESSIONAL FINDINGS AND PURPOSE

24 SEC. 2. (a) *The Congress finds that personal injuries*
25 *and illnesses arising out of work situations impose a sub-*

1 *stantial burden upon, and are a hindrance to, interstate com-*
2 *merce in terms of lost production, wage loss, medical ex-*
3 *penses, and disability compensation payments.*

4 *(b) The Congress declares it to be its purpose and*
5 *policy, through the exercise of its powers to regulate com-*
6 *merce among the several States and with foreign nations*
7 *and to provide for the general welfare, to assure so far as*
8 *possible every working man and woman in the Nation safe*
9 *and healthful working conditions and to preserve our human*
10 *resources—*

11 *(1) by encouraging employers and employees in*
12 *their efforts to reduce the number of occupational safety*
13 *and health hazards at their places of employment, and*
14 *to stimulate employers and employees to institute new*
15 *and to perfect existing programs for providing safe and*
16 ***healthful working conditions;***

17 *(2) by building upon advances already made*
18 *through employer and employee initiative for providing*
19 ***safe and healthful working conditions;***

20 *(3) by providing for research in the field of occupa-*
21 *tional safety and health, including the psychological*
22 *factors involved, and by developing innovation methods,*
23 *techniques and approaches for dealing with occupational*
24 ***safety and health problems;***

25 *(4) by exploring ways to discover latent diseases,*

1 *establishing causal connections between diseases and*
2 *work in environmental conditions, and conducting other*
3 *research relating to health problems, in recognition of*
4 *the fact that occupational health standards present prob-*
5 *lems often different from those involved in occupational*
6 *safety;*

7 (5) *by providing for training programs to increase*
8 *the number and competence of personnel engaged in the*
9 *field of occupational safety and health;*

10 (6) *by providing for the development, promulga-*
11 *tion, and effective enforcement of occupational safety and*
12 *health standards;*

13 (7) *by encouraging the States to assume the fullest*
14 *responsibility for the administration and enforcement of*
15 *their occupational safety and health laws by providing*
16 *grants to the States to assist in identifying their needs*
17 *and responsibilities in the area of occupational safety*
18 *and health, to develop plans in accordance with the pro-*
19 *visions of this Act, to improve the administration and*
20 *enforcement of State occupational safety and health laws,*
21 *and to conduct experimental and demonstration projects*
22 *in connection therewith;*

23 (8) *by providing for appropriate accident and*
24 *health reporting procedures which will help achieve the*

1 objectives of this Act and accurately describe the nature
2 of the occupational safety and health problem; and

3 (9) by encouraging joint labor-management efforts
4 to reduce injuries and disease arising out of employment.

5 DEFINITIONS

6 SEC. 3. For the purposes of this Act—

7 (1) The term "Secretary" means the Secretary of
8 Labor.

9 (2) The term "commerce" means trade, traffic, com-
10 merce, transportation, or communication among the several
11 States, or between a State and any place outside thereof, or
12 within the District of Columbia, or a possession of the United
13 States (other than a State as defined in paragraph (6) of
14 this subsection), or between points in the same State but
15 through a point outside thereof.

16 (3) The term "person" means one or more individuals,
17 partnerships, associations, corporations, business trusts, joint
18 representatives, or any organized group of persons.

19 (4) The term "employer" means a person engaged in
20 a business affecting commerce who has employees, but does
21 not include the United States or any State or political sub-
22 division of a State, except that it does include a public au-
23 thority which is subject to the jurisdiction of more than one
24 State, whether or not subsidized with public funds, which has
25 employees engaged in the administration or maintenance of a
26 bridge or tunnel.

1 (5) The term "employee" means an employee of an
2 employer who is employed in a business of his employer
3 which affects commerce.

4 (6) The term "State" includes a State of the United
5 States, the District of Columbia, Puerto Rico, the Virgin
6 Islands, American Samoa, Guam, and the Trust Territory of
7 the Pacific Islands.

8 (7) The term "occupational safety and health stand-
9 ard" means a standard which requires conditions, or the adop-
10 tion or use of one or more practices, means, methods, opera-
11 tions, or processes, reasonably necessary or appropriate to
12 provide safe or healthful employment and places of employ-
13 ment.

14 (8) The term "national consensus standard" means any
15 occupational safety and health standard or modification
16 thereof which (A) has been adopted and promulgated by a
17 nationally recognized standards-producing organization un-
18 der procedures whereby it can be determined by the Secretary,
19 that persons interested and affected by the scope or pro-
20 visions of the standard have reached substantial agreement
21 on its adoption, (B) was formulated in a manner which
22 afforded an opportunity for diverse views to be considered,
23 and (C) has been designated as such a standard by the
24 Secretary, after consultation with other appropriate Federal
25 agencies.

1 (9) The term "established Federal standard" means
 2 any operative occupational safety and health standard estab-
 3 lished by any agency of the United States and presently in
 4 effect, or contained in any Act of Congress in force on the
 5 date of enactment of this Act.

6 APPLICABILITY OF ACT

7 Sec. 4. (a) This Act shall apply only with respect to
 8 employment performed in a workplace in a State, Wake
 9 Island, Outer Continental Shelf lands defined in the Outer
 10 Continental Shelf Lands Act, Johnston Island, or the Canal
 11 Zone. The Secretary of the Interior shall, by regulation, pro-
 12 vide for judicial enforcement of this Act by the courts estab-
 13 lished for areas in which there are no Federal district courts
 14 having jurisdiction.

15 (b)(1) Nothing in this Act shall be deemed to repeal or
 16 modify any other Federal law prescribing safety or health
 17 requirements or the standards, rules, or regulations promul-
 18 gated pursuant to such law.

19 (2) The safety and health standards promulgated under
 20 the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et
 21 seq.), the Service Contract Act (41 U.S.C. 351 et seq.),
 22 Public Law 91-54, Act of August 9, 1969 (83 Stat. 96,
 23 40 U.S.C. 3331), and the National Fire Protection Act and
 24 Hazardous Act (20 U.S.C. 951 et seq.), are deemed
 25 repealed on the effective date of corresponding standards pro-

1 promulgated under this Act, as determined by the Secretary of
2 Labor to be corresponding standards.

3 (3) The Secretary shall, within three years after the
4 effective date of this Act, report to the Congress his recom-
5 mendations for legislation to avoid unnecessary duplication
6 and to achieve coordination between this Act and other Fed-
7 eral laws.

8 DUTIES OF EMPLOYERS

9 SEC. 5. Each employer—

10 (1) shall furnish to each of his employees employ-
11 ment and a place of employment which is safe and
12 healthful, and

13 (2) shall, except as provided in section 17, com-
14 ply with occupational safety and health standards and
15 with interim standards which are promulgated under
16 this Act.

17 INTERIM SAFETY AND HEALTH STANDARDS

18 SEC. 6. The Secretary shall, as soon as practicable dur-
19 ing the period beginning with the effective date of this Act
20 and ending two years after such date, by rule promulgate
21 as an interim standard, any national consensus standard, any
22 established Federal standard then in effect (not limited to
23 its present area of application), and any standard proposed
24 by a nationally recognized standards-producing organization
25 by other than a consensus method, unless he determines that

1 the promulgation of such a standard as an interim standard
2 would not result in improved safety or health for specifi-
3 cally designated employees. In the event of conflict among
4 any such standards, the Secretary shall promulgate the
5 standard which assures the greatest protection of the safety
6 or health of the affected employees. No such standard shall
7 be promulgated without a public hearing with respect thereto
8 at which interested persons are afforded an opportunity to
9 express their views, but in other respects section 553 of title
10 5, United States Code, shall be applicable in carrying out
11 this section. Each interim standard shall stay in effect until
12 superseded by another interim standard or until superseded
13 pursuant to a rule issued and in effect under section 7. The
14 Secretary shall commence (by appointing an advisory com-
15 mittee) a proceeding under section 7 for the promulgation
16 of an occupational safety and health standard dealing with
17 the same subject matter as each interim standard or stand-
18 ards, and any additional occupational safety or health issues
19 he deems relevant, within ninety days after he promulgates
20 such interim standard.

21 OCCUPATIONAL SAFETY AND HEALTH STANDARDS

22 SEC. 7. (a) The Secretary may, by rule, promulgate,
23 modify, or revoke any occupational safety and health stand-
24 ard in the following manner:

25 (1) Whenever the Secretary acquires the basis of informa-

tion submitted to him in writing by an interested person, a representative of an organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, a State, or a political subdivision of a State, or on the basis of information otherwise available to him, determines that such a rule should be prescribed in order to serve the objectives of this Act, and whenever he is required to do so by section 6, the Secretary shall appoint an advisory committee under section 8(b) of this Act, which shall submit to him its recommendations regarding the rule to be prescribed which will carry out the purposes of this Act, which recommendations shall be published by him in the Federal Register, either as part of a subsequent notice of proposed rulemaking or separately. The recommendations of an advisory committee shall be submitted to the Secretary within two hundred and seventy days from its appointment, or within such longer or shorter period as may be prescribed by the Secretary, but in no event may he prescribe a period which is longer than one year and three months.

(2) After the submission of such recommendations, the Secretary shall, as soon as practicable and in any event within four months, schedule and give notice of a hearing on the recommendations of the advisory committee and any other relevant subjects and issues. In the event that the

1 *advisory committee fails to submit recommendations within*
2 *two hundred and seventy days from its appointment (or*
3 *such longer or shorter period as the Secretary has prescribed)*
4 *the Secretary shall make a proposal relevant to the purpose*
5 *for which the advisory committee was appointed, and shall*
6 *within four months schedule and give notice of hearing*
7 *thereon. In either case, notice of the time, place, subjects,*
8 *and issues of any such hearing shall be published in the Fed-*
9 *eral Register thirty days prior to the hearing and shall con-*
10 *tain the recommendations of the advisory committee or the*
11 *proposal made in absence of such recommendation. Prior to*
12 *the hearing interested persons shall be afforded an oppor-*
13 *tunity to submit comments upon any recommendations of*
14 *the advisory committee or other proposal. Only persons who*
15 *have submitted such comments shall have a right at such*
16 *hearing to submit oral arguments, but nothing herein shall*
17 *be deemed to prevent any person from submitting written*
18 *evidence, data, views, or arguments.*

19 *(3) Upon the entire record before him, including the*
20 *advisory committee recommendations and any evidence, data,*
21 *views, and arguments submitted in connection with the hear-*
22 *ing, the Secretary shall within sixty days after completion*
23 *of the hearing issue a rule promulgating, modifying, or re-*
24 *voking an occupational safety and health standard or make*
25 *a determination that a rule should not be issued. Such a*

1 rule may contain a provision delaying its effective date
2 for such period (not in excess of ninety days) as the Secre-
3 tary determines may be appropriate to insure that affected
4 employers and employees will be informed of the existence
5 of the standard and of its terms and that employers affected
6 are given an opportunity to familiarize themselves and their
7 employees with the requirements of the standard.

8 (4) The Secretary, in promulgating standards under
9 this subsection, shall set the standard which most adequately
10 assures, on the basis of the best available professional evi-
11 dence, that no employee will suffer any impairment of health,
12 or functional capacity, or diminished life expectancy even if
13 such employee has regular exposure to the hazard dealt with
14 by such standard for the period of his working life. Wherever
15 practicable, such standard shall be expressed in terms of
16 objective criteria and in terms of the performance desired.

17 (b) Any affected employer may apply to the Secretary
18 for a rule or order for an exemption from clause (2) of sec-
19 tion 5. Affected employees shall be given notice of each such
20 application and an opportunity to participate in a hearing.
21 The Secretary shall issue such rule or order if he determines
22 on the record, after an opportunity for an inspection and a
23 hearing, that the proponent of the exemption has demon-
24 strated by a preponderance of the evidence that the conditions,
25 practices, means, methods, operations, or processes used or

1 *proposal to be used by an employer will provide employment*
2 *and places of employment to his employees which are as*
3 *safe and healthful as those which would prevail if he com-*
4 *plied with the standard. The rule or order so issued shall*
5 *prescribe the conditions the employer must maintain, and*
6 *the practices, means, methods, operations, and processes*
7 *which he must adopt and utilize to the extent they differ from*
8 *the standard in question. Such a rule or order may be modi-*
9 *fied or revoked upon application by an employer, employees,*
10 *or by the Secretary on his own motion in the manner pre-*
11 *scribed for its issuance under this subsection at any time*
12 *after six months after its issuance and at six month intervals*
13 *thereafter.*

14 *(c) (1) The Secretary shall determine, as soon as possible*
15 *after a special inspection, but in any event within 90 days of*
16 *any such inspection, whether or not to promulgate, on an emer-*
17 *gency temporary basis, an occupational safety and health*
18 *standard to take effect thirty days after publication in the*
19 *Federal Register. Such standard shall be promulgated if the*
20 *Secretary finds (A) that employees are exposed to grave*
21 *danger from exposure to substances determined to be toxic*
22 *or to new hazards and (B) that such emergency standard is*
23 *necessary to protect employees from such grave danger.*

24 *(2) Such standard shall be effective for a period not to*
25 *exceed six months unless, prior to the expiration of such*

1 period a proceeding under paragraph (3) of this subsection
2 has been commenced and is pending, but shall then be effective only until the termination of that proceeding.

4 (3) Upon publication of such standard in the Federal
5 Register the Secretary shall commence a hearing in accordance
6 with sections 556 and 557 of title 5, United States Code, and
7 the standard as published shall also serve as a proposed rule
8 for the hearing.

9 (d) Whenever the Secretary promulgates any standard,
10 makes any rule, order, decision, grants any exemption or
11 extension of time, or compromises, mitigates, or settles any
12 penalty assessed under this Act, he shall include a statement
13 of the reasons for such action, and such statement shall be
14 published in the Federal Register.

15 ADMINISTRATION; ADVISORY COMMITTEES

16 SEC. 8. (a) In carrying out his responsibilities under
17 this Act, the Secretary is authorized to—

18 (1) use, with the consent of any Federal agency,
19 the services, facilities, and employees of such agency
20 with or without reimbursement, and with the consent of
21 any State or political subdivision thereof, accept and
22 use the services, facilities, and employees of the agencies
23 of such State or subdivision with reimbursement; and

24 (2) employ experts and consultants or organiza-
25 tions thereof as authorized by section 3109 of title 5,

1 *United States Code, except that contracts for such*
2 *employment may be renewed annually; compensate indi-*
3 *viduals so employed at rates not in excess of the rate*
4 *specified at the time of service for grade GS-18 in section*
5 *5332 of title 5, United States Code, including traveltime;*
6 *and allow them while away from their homes or regular*
7 *places of business, travel expenses (including per diem in*
8 *lieu of subsistence) as authorized by section 5703 of title*
9 *5, United States Code, for persons in the Government*
10 *service employed intermittently, while so employed.*

11 *(b) The Secretary shall appoint advisory committees to*
12 *recommend occupational safety and health standards under*
13 *section 7(a) of this Act before the commencement of pro-*
14 *ceedings thereunder. Each such advisory committee shall*
15 *consist of not more than fifteen members and shall include*
16 *as a member one or more designees of the Secretary of*
17 *Health, Education, and Welfare, and shall include among*
18 *its members an equal number of persons qualified by experi-*
19 *ence and affiliation to present the viewpoint of the employers*
20 *involved, and of persons similarly qualified to present the*
21 *viewpoint of the workers involved, as well as one or more*
22 *representatives of health and safety agencies of the States.*
23 *An advisory committee may also include such other persons*
24 *as the Secretary may appoint who are qualified by knowledge*
25 *and experience to make a useful contribution to the work of*

1 the committee, including one or more representatives of pro-
2 fessional organizations of technicians or professionals special-
3 izing in occupational safety or health, and one or more repre-
4 sentatives of nationally recognized standards-producing or-
5 ganizations, but the number of persons so appointed to any
6 advisory committee shall not exceed the number appointed
7 to such committee as representatives of Federal and State
8 agencies. Persons appointed to advisory committees from
9 private life shall be compensated in the same manner as con-
10 sultants or experts under subsection (a)(2) of this section.
11 The Secretary shall pay to any State which is the employer
12 of a member of the committee who is a representative of
13 the health or safety agency of that State, reimbursement suf-
14 ficient to cover the actual cost to the State resulting from
15 such representative's membership on the committee. Any
16 meeting of the committee shall be open to the public and an
17 accurate record shall be kept and made available to the
18 public. No member of the committee (other than representa-
19 tives of employers and employees) shall have an economic
20 interest in any proposed rule.

21 (c)(1) The Secretary and the Secretary of Health,
22 Education, and Welfare shall appoint a National Advisory
23 Committee on Occupational Safety and Health (hereafter in
24 this subsection referred to as the "Committee"). The Com-

1 *mittee shall consist of twenty members appointed without re-*
2 *gard to the civil service laws and composed equally of rep-*
3 *resentatives of management, labor, occupational safety and*
4 *occupational health professions, and of the public. The Sec-*
5 *retary shall appoint all members of the Committee except for*
6 *occupational health representatives who shall be appointed*
7 *by the Secretary of Health, Education, and Welfare. The*
8 *Secretary shall designate one of the public members as Chair-*
9 *man. The members shall be selected upon the basis of their*
10 *experience and competence in the field of occupational safety*
11 *and health.*

12 *(2) The Committee shall advise, consult with, and make*
13 *recommendations to, the Secretaries of Labor and Health,*
14 *Education, and Welfare on matters relating to the imple-*
15 *mentation of this Act. The Committee shall hold no fewer*
16 *than two meetings during each calendar year. All meetings of*
17 *the Committee shall be open to the public and a transcript*
18 *shall be kept and made available for public inspection.*

19 *(3) The members of the Committee shall be compen-*
20 *sated in accordance with the provisions of subsection (a)(2)*
21 *of this section.*

22 *(4) The Secretary shall furnish to the Committee an*
23 *executive secretary and such secretarial, clerical, and other*
24 *services as are deemed necessary to the conduct of its*
25 *business.*

1 *INSPECTIONS, INVESTIGATIONS, AND REPORTS*

2 *SEC. 9. (a) In order to carry out the purposes of this*
3 *Act, the Secretary, upon presenting appropriate credentials*
4 *to the owner, operator, or agent in charge, is authorized—*

5 *(1) to enter upon at reasonable times any work-*
6 *place where work is performed to which this Act*
7 *applies; and*

8 *(2) to inspect and investigate during regular work-*
9 *ing hours and at other reasonable times, and within*
10 *reasonable limits and in a reasonable manner, any such*
11 *place and all pertinent conditions, structures, machines,*
12 *apparatus, devices, equipment, and materials therein, and*
13 *to question any such employer, owner, operator, agent*
14 *or employee.*

15 *(b) For the purposes of any investigation provided for*
16 *in this title, the provisions of sections 9 and 10 (relating*
17 *to the attendance of witnesses and the production of books,*
18 *papers, and documents) of the Federal Trade Commission*
19 *Act of September 16, 1914 (15 U.S.C. 49, 50), are hereby*
20 *made applicable to the jurisdiction, powers, and duties of*
21 *the Secretary or any officers designated by him.*

22 *(c) Each employer shall make, keep, and preserve,*
23 *and make available to the Secretary such record of his activi-*
24 *ties concerning the requirements of this Act, and shall make*
25 *reports therefrom to the Secretary, as he may prescribe by*

1 regulation or order as necessary or appropriate for the
2 enforcement of this Act. The Secretary shall also make such
3 regulations as may be necessary to assure that employers
4 keep their employees continuously informed of their rights,
5 privileges, and obligations under this Act. The Secretary in
6 cooperation with the Secretary of Health, Education, and
7 Welfare shall make regulations requiring employers to keep
8 records of all work-related injuries, diseases, and ailments
9 which arise from conditions present in the working
10 environment.

11 (d) Any information obtained by the Secretary, the
12 Secretary of Health, Education, and Welfare, or a State
13 agency under this Act shall be obtained with a minimum
14 burden upon employers, especially those operating small
15 businesses. Unnecessary duplication of efforts in obtaining
16 information shall be reduced to the minimum extent
17 feasible.

18 (e) A representative of the employer and a representa-
19 tive authorized by his employees shall be given an opportu-
20 nity to accompany any person who is making an inspection
21 under subsection (a) of any workplace.

22 CITATIONS FOR VIOLATIONS

23 SEC. 10. (a) If, upon inspection or investigation, the
24 Secretary determines that an employer has violated any
25 (1) of section 5, may rule or order issued under section 7 (b),

1 or any regulation prescribed under section 9(c), and that
2 a serious danger exists by reason of any such violation, he
3 shall issue a citation forthwith to the employer for such
4 violation. Each such citation shall (1) be in writing, (2)
5 describe with particularity the nature of the violation, in-
6 cluding a reference to the provision of the standard, rule,
7 order, or regulation alleged to have been violated, and (3)
8 the period of time within which it must be corrected.

9 (b) If, upon inspection or investigation, the Secretary
10 determines that an employer has violated clause (1) of sec-
11 tion 5 and a serious danger exists, or has violated any regula-
12 tion prescribed under section 9(c) or any rule or order
13 issued under section 7(b), but that no serious danger exists
14 by reason of such violation, he shall issue a citation forthwith
15 to the employer for such violation. Each such citation shall
16 (1) be in writing, (2) describe with particularity the nature
17 of the violation, including a reference to the provision of the
18 standard, duty, rule, order, or regulation alleged to have
19 been violated, and (3) the period of time within which it
20 must be corrected. For purposes of this subsection, an em-
21 ployer shall not be deemed to have violated a citation issued
22 for a violation of clause (1) of section 5 where a serious
23 danger exists if the employer is in compliance with an
24 applicable interim standard, occupational health or safety

1 standard, promulgated under this Act or under a State
2 plan applicable under section 17(c).

3 (c) If, upon inspection or investigation, the Secretary
4 determines that an employer has violated clauses (1) or (2)
5 of section 5, and specifically determines, together with his
6 reasons, that no serious danger exists by reason of such viola-
7 tion, he shall issue a citation forthwith to the employer
8 for such violation. Each such citation shall (1) be in writ-
9 ing, (2) describe with particularity the nature of the viola-
10 tion, including a reference to the provision of the standard,
11 rule, order, duty, or regulation alleged to have been violated.

12 (d) Where a citation is issued under subsection (a) or
13 (b) for a violation which might cause cumulative or latent ill-
14 effects, such citation shall specify, where feasible, a period
15 during which employers shall accurately measure the expo-
16 sure of employees to such danger.

17 (e) Each citation issued under this section or a copy
18 or copies thereof shall be prominently posted (as prescribed
19 in regulations made under section 9(c)) at or near each
20 place a violation referred to in the citation occurred.

21 (f) For purposes of this Act a "serious danger" shall
22 be deemed to exist in a place of employment if there is a
23 substantial probability that at any time death or serious physi-
24 cal harm could result from a condition which exists, or from
25 one or more practices, methods, means, or procedures, or from

1 *esses which have been adopted or are in use, in such place of*
2 *employment.*

3 *PROCEDURES FOR ENFORCEMENT*

4 *SEC. 11. (a) If, after an inspection or investigation,*
5 *the Secretary issues a citation under section 10 (a) or (b),*
6 *the Secretary shall, within ten working days of the termina-*
7 *tion of such inspection or investigation, notify the employer*
8 *by certified mail of the penalty, if any, proposed to be*
9 *assessed under section 15 and that he has fifteen working*
10 *days within which to notify the Secretary that he wishes*
11 *to contest the citation or proposed assessment of penalty. If*
12 *such notice is not issued by the Secretary within such ten-*
13 *day period then such citation and proposed assessment of*
14 *penalty shall be void. If, within fifteen working days from*
15 *the receipt of such a notice, the employer fails to notify*
16 *the Secretary that he intends to contest the citation or pro-*
17 *posed assessment of penalty, the citation and the assessment,*
18 *as proposed, shall be final and not subject to review by any*
19 *court or agency, and for purposes of subsection (c) shall be*
20 *considered an order issued by the Secretary under subsection*
21 *(b).*

22 *(b) If an employer notifies the Secretary that he in-*
23 *tends to contest a citation issued under section 10 (a) or*
24 *(b) or proposed assessment of penalty or if the Secretary*
25 *determines an employer has failed to correct a violation for*

1 which such a citation has been issued within the period per-
2 mitted for its correction (which period shall not begin to
3 run until the termination of proceedings under this subsec-
4 tion), the Secretary shall afford an opportunity for a hearing
5 (in accordance with section 554 of title 5, United States
6 Code, but without regard to subsection (a)(3) of such sec-
7 tion), and shall, if he determines such citation is valid, issue
8 an order, based on findings of fact, confirming, denying, or
9 modifying the citation or assessment of penalty, or, if he de-
10 termines the employer has failed to correct such violation
11 within such period, issue such orders, based on findings of
12 fact, as may be necessary for the correction of the violation
13 for which the citation was issued, and for the assessment
14 and collection of any penalty under section 15 (a), (b),
15 or (c). The Secretary shall give such person the information
16 required by section 554(b) of such title at least fifteen days
17 prior to hearing. In proceedings under this subsection, the
18 Secretary shall consider, among other things, the validity
19 of any standard, rule, order, or regulation alleged to have
20 been violated, and the reasonableness of the period of time
21 permitted for the correction of the violation.

22 (c) The Secretary shall have power, upon issuance
23 of an order under subsection (b), to petition any United
24 States district court within the district where a violation
25 is alleged to have occurred or where the employer has its

1 principal office for appropriate relief. The United States
2 district courts shall have jurisdiction to enforce (by
3 restraining order, injunction, or otherwise) any order
4 of the Secretary issued under subsection (b). Except in
5 the case of an order which has become final under section
6 11(a), any person adversely affected or aggrieved by an
7 order of the Secretary issued under subsection (b) may
8 obtain review of such order by the United States district court
9 for the district where the violation is alleged to have occurred
10 or where the employer has its principal office by filing in such
11 court within thirty days following the issuance of such order
12 a petition praying that the action of the Secretary be modified
13 or set aside in whole or in part. Review by the court shall
14 be in accord with the provisions of section 706 of title 5,
15 United States Code. A petition for review by the court shall
16 not stay an order of the Secretary under subsection (b)
17 unless otherwise provided by the court.

18 *PROCEDURES TO COUNTERACT IMMINENT DANGERS*

19 *SEC. 12. (a) If an inspection or investigation of a*
20 *place of employment discloses that imminent danger*
21 *exists in such place of employment, the Secretary may issue*
22 *an order prohibiting the employment or presence of any*
23 *individuals in locations or under conditions where such an*
24 *imminent danger exists, except to correct or remove it. Such*

1 order may remain in effect for not more than five days from
2 the date of its issuance.

3 (b) If, upon inspection or investigation of a place of
4 employment, the Secretary determines that an imminent
5 danger exists in such place of employment, the Secretary
6 may bring a civil action in the United States district court
7 for the district where the imminent danger exists or where the
8 employer has its principal office for a temporary restraining
9 order or injunction prohibiting the employment or presence of
10 any individual in locations or under conditions where such
11 an imminent danger exists, except to correct or remove it. An
12 action may be brought under this subsection where an order
13 of the Secretary under subsection (a) is in effect. If, in a
14 proceeding under section 11, it is finally determined that any
15 condition which existed, or any practice, means, method, op-
16 eration, or process which was adopted or in use in a place of
17 employment did not violate section 5, and it was upon the
18 basis of the existence of such condition or the adoption of
19 such practice, means, method, operation, or process that
20 an order was issued under this subsection, then such order
21 shall no longer be in effect.

22 (c) If the Secretary arbitrarily or capriciously issues
23 or fails to issue an order under subsection (a) and any
24 person is injured thereby either physically or financially, be-
25 cause of such order or failure to issue such order, such

1 person may bring an action against the United States in the
2 Court of Claims in which he may recover the damages he
3 has sustained, including reasonable court costs and attorneys'
4 fees.

5 (d) For purposes of this section an imminent danger
6 shall be deemed to exist in a place of employment if such
7 danger could reasonably be expected to cause death or serious
8 physical harm before the imminence of such danger can be
9 eliminated.

10 REPRESENTATION IN CIVIL LITIGATION

11 SEC. 13. Except as provided in section 518(a) of title
12 28, United States Code, relating to litigation before the
13 Supreme Court and the Court of Claims, the Solicitor of
14 Labor may appear for and represent the Secretary in any
15 civil litigation brought under this Act but all such litigation
16 shall be subject to the direction and control of the Attorney
17 General.

18 CONFIDENTIALITY OF TRADE SECRETS

19 SEC. 14. All information reported to or otherwise ob-
20 tained by the Secretary or his representative in connection
21 with any inspection or proceeding under this Act which con-
22 tains or which might reveal a trade secret referred to in sec-
23 tion 1905 of title 18 of the United States Code shall be con-
24 sidered confidential for the purpose of that section, except
25 that such information may be disclosed to other officers or

1 *employees concerned with carrying out this Act or when*
2 *relevant in any proceeding under this Act.*

3 **PENALTIES**

4 *SEC. 15. (a) Any employer who (1) receives a citation*
5 *under section 10(a), (2) fails to correct a violation for*
6 *which a citation has been issued under section 10(a) within*
7 *the period permitted for its correction (which period shall*
8 *not begin to run until the termination of any proceedings*
9 *under section 11(b)), or (3) violates an order issued under*
10 *section 12(a), shall be assessed by the Secretary, pursuant*
11 *to an order issued under section 11(b), a civil penalty of*
12 *not more than \$1,000 for each violation. Each violation shall*
13 *be a separate offense. When the violation is of a continuing*
14 *nature, each day during which it continues after a reasonable*
15 *time specified in an initial decision following the hearing*
16 *held under section 11(b) shall constitute a separate offense*
17 *except during the time a review of the order under section*
18 *11(b) may be taken, or such review is pending and during*
19 *the time allowed in the order under section 11(b) for cor-*
20 *rection. The Secretary may compromise, mitigate, or settle*
21 *any claim for civil penalties. In assessing the penalty con-*
22 *sideration shall be given to the appropriateness of the*
23 *penalty, to the size of the business of the person charged, to*
24 *the gravity of the violation, to the history of previous viola-*
25 *tions, and to the good faith of the employer.*

1 (b) Any employer who receives a citation under section
2 10(b), or fails to correct a violation for which a citation has
3 been issued under section 10(b) within the time prescribed
4 for its correction (which period shall not begin to run until
5 the termination of any proceedings under section 11(b)),
6 may be assessed by the Secretary, pursuant to an order
7 issued under section 11(b), a civil penalty of not more
8 than \$1,000 for each violation. Each violation shall be
9 a separate offense. When the violation is of a continuing
10 nature, each day during which it continues after a reasonable
11 time specified in an initial decision following the hearing held
12 under section 11(b) shall constitute a separate offense except
13 during the time a review of the order under section 11(b)
14 may be taken, or such review is pending and during the time
15 allowed in the order under section 11(b) for correction. The
16 Secretary may compromise, mitigate, or settle any claim for
17 civil penalties. In assessing the penalty consideration shall
18 be given to the appropriateness of the penalty, to the size of
19 the business of the person charged, to the gravity of the viola-
20 tion, to the history of previous violations, and to the good
21 faith of the employer.

22 (c) Any employer who willfully violates any standards
23 promulgated under sections 6 and 7 of this Act may be as-
24 sessed by the Secretary, pursuant to an order issued under

1 section 11 of this Act, a civil penalty of not more than \$10,-
2 000 for each violation. In assessing the penalty, consideration
3 shall be given to the appropriateness of the penalty to the size
4 of the business of the person charged, to the gravity of the
5 violation, to the history of previous violations, and to the good
6 faith of the employer.

7 (d) Any person who forcibly assaults, resists, opposes,
8 impedes, intimidates, or interferes with any person while
9 engaged in or on account of the performance of inspections
10 or investigatory duties under this Act shall be fined not more
11 than \$5,000 or imprisoned not more than three years, or
12 both. Whoever, in the commission of any such acts, uses a
13 deadly or dangerous weapon, shall be fined not more than
14 \$10,000 or imprisoned not more than ten years or both.
15 Whoever kills any person while engaged in or on account of
16 the performance of inspecting or investigatory duties under
17 this Act shall be punished by imprisonment for any term
18 of years or for life.

19 (e) Advance notice may be given of investigations
20 necessary for the Secretary and the Secretary of Health,
21 Education, and Welfare to effectively obtain, utilize, or
22 disseminate information relating to health or safety condi-
23 tions, the causes of accidents, diseases, and physical impair-
24 ments, however, any person who gives advance notice of
25 any investigation to be conducted under this Act shall be fined

1 not more than \$1,000 or imprisoned not more than one year,
2 or both.

3 (f) Any person who discriminates against any em-
4 ployee because of any action such employee has taken on
5 behalf of himself or others, to secure the protection afforded by
6 this Act shall be fined not more than \$1,000 or imprisoned
7 not more than one year, or both.

8 **VARIATIONS, TOLERANCES, AND EXEMPTIONS**

9 *SEC. 16.* The Secretary may provide such reasonable
10 limitations and may make such rules and regulations allow-
11 ing reasonable variations, tolerances, and exemptions to and
12 from any or all provisions of this Act as he may find neces-
13 sary and proper to avoid serious impairment of the national
14 defense. Such action shall not be in effect for more than
15 six months without notification to affected employees and
16 an opportunity being afforded for a hearing.

17 **STATE JURISDICTION AND STATE PLANS**

18 *SEC. 17. (a)* Nothing in this Act shall prevent any
19 State agency or court from asserting jurisdiction under State
20 law over any occupational safety or health issue with respect
21 to which no standard is in effect under section 6 or 7.

22 (b) Any State which, at any time, desires to assume
23 responsibility for development and enforcement therein of
24 occupational safety and health standards relating to any
25 occupational safety or health issue with respect to which

1 a Federal standard has been promulgated under section 7
2 shall submit a State plan for the development of such stand-
3 ards and their enforcement.

4 (c) The Secretary shall approve the plan submitted by
5 a State under subsection (b), or any modification thereof,
6 if such plan in his judgment—

7 (1) designates a State agency or agencies as the
8 agency or agencies responsible for administering the plan
9 throughout the State,

10 (2) provides for the development and enforcement
11 of safety and health standards relating to one or more
12 safety or health issues, which standards (and the enforce-
13 ment of which standards) are or will be at least as
14 effective in providing safe and healthful employment and
15 places of employment as the standards promulgated un-
16 der section 7 which relate to the same issues,

17 (3) provides for a right of entry and inspection of
18 all workplaces subject to the Act which is at least as
19 effective as that provided in section 2 (a), (c), (d), and
20 (e), and includes a prohibition on advance notice of
21 inspections,

22 (4) contains satisfactory assurances that such
23 agency or agencies have or will have the legal authority
24 and qualified personnel necessary for the enforcement of
25 such standards,

1 (5) gives satisfactory assurances that such State will
2 devote adequate funds to the administration and enforce-
3 ment of such standards,

4 (6) makes all standards included under the plan ap-
5 plicable to all employees of public agencies of the State
6 and its political subdivisions,

7 (7) requires employers in the State to make reports
8 to the Secretary in the same manner and to the same ex-
9 tent as if the plan were not in effect, and

10 (8) provides that the State agency will make such
11 reports to the Secretary in such form and containing
12 such information, as the Secretary shall from time to
13 time require.

14 (d) If the Secretary rejects a plan submitted under
15 subsection (b), he shall afford the State submitting the plan,
16 due notice and opportunity for a hearing before so doing.

17 (e) After the Secretary approves a State plan submitted
18 under subsection (b), he may, but shall not be required to,
19 exercise his authority under sections 9, 10, 11, and 15 with
20 respect to comparable standards promulgated under section
21 7, for the period specified in the next sentence. The Secre-
22 tary may exercise the authority referred to above until he
23 determines, on the basis of actual operations under the State
24 plan, that the criteria set forth in subsection (c) are being
25 applied, but he shall not make such determination for at least

1 three years after the plan's approval under subsection (c).
2 Upon making the determination referred to in the preceding
3 sentence, the provisions of sections 5(2), 9 (except for
4 purpose of carrying out subsection (f)), 10, 11, and 15
5 and standards promulgated under section 7 of this Act, shall
6 not apply with respect to any occupational safety or health
7 issues covered under the plan, but the Secretary may retain
8 jurisdiction under the above provisions in any proceeding
9 commenced under section 10 or 11 before the date of
10 determination.

11 (1) The Secretary shall, on the basis of reports sub-
12 mitted by the State agency and his own inspections make a
13 continuing evaluation of the manner in which each State
14 having a plan approved under this section is carrying out
15 such plan. Whenever the Secretary finds, after affording
16 due notice and opportunity for a hearing, that in the adminis-
17 tration of the State plan there is a failure to comply sub-
18 stantially with any provision of the State plan (or any assen-
19 sance contained therein), he shall notify the State agency of
20 his withdrawal of approval of such plan and upon receipt
21 of such notice such plan shall cease to be in effect, but the
22 State may retain jurisdiction in any case commenced before
23 the withdrawal of the plan in order to enforce standards under
24 the plan whenever the issues involved do not relate to the
25 reasons for the withdrawal of the plan.

1 (g) *The State may obtain a review of a decision of the*
2 *Secretary withdrawing approval of or rejecting its plan by*
3 *the United States court of appeals for the circuit in which*
4 *the State is located by filing in such court within thirty days*
5 *following receipt of notice of such decision a petition praying*
6 *that the action of the Secretary be modified or set aside in*
7 *whole or in part. A copy of such petition shall forthwith be*
8 *served upon the Secretary, and thereupon the Secretary*
9 *shall certify and file in the court the record upon which the*
10 *decision complained of was issued as provided in section*
11 *2112 of title 28, United States Code. Unless the court finds*
12 *that the Secretary's decision in rejecting a proposed State*
13 *plan or withdrawing his approval of such a plan to be arbi-*
14 *trary and capricious, the court shall affirm the Secretary's*
15 *decision. The judgment of the court shall be subject to re-*
16 *view by the Supreme Court of the United States upon cer-*
17 *tiorari or certification as provided in section 1254 of title*
18 *28, United States Code.*

19 **FEDERAL AGENCY SAFETY PROGRAMS AND**
20 **RESPONSIBILITIES**

21 **SEC. 18.** (a) *It shall be the responsibility of the head*
22 *of each Federal agency to establish and maintain an effective*
23 *and comprehensive occupational safety and health program*
24 *which is consistent with the standards promulgated under sec-*

tion 7. The head of each agency shall (after consultation with representatives of the employees thereof)—

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 7;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action; and

(4) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(c)(2) of title 5, United States Code.

(b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(4) of this section, together with his evaluation of and recommendations derived from such reports. The President shall transmit annually to the Senate and House of Representatives a report of the activities of Federal agencies under this section.

(c) Section 7902(c)(1) of title 5, United States Code

1 is amended by inserting after "agencies" the following: "and
2 of labor organizations representing employees".

3 **RESEARCH AND RELATED ACTIVITIES**

4 *Sec. 19. (a)(1) The Secretary of Health, Education,*
5 *and Welfare, after consultation with the Secretary and with*
6 *other appropriate Federal departments or agencies, shall con-*
7 *duct (directly or by grants or contracts) research, experi-*
8 *ments, and demonstrations relating to occupational safety*
9 *and health, including studies of psychological factors involved,*
10 *and relating to innovative methods, techniques, and ap-*
11 *proaches for dealing with occupational safety and health*
12 *problems.*

13 *(2) The Secretary of Health, Education, and Welfare*
14 *shall from time to time consult with the Secretary in order*
15 *to develop specific plans for such research, demonstrations,*
16 *and experiments as are necessary to produce criteria enabling*
17 *the Secretary to meet his responsibility for the formulation of*
18 *safety and health standards under this Act; and the Secretary*
19 *of Health, Education, and Welfare, on the basis of such re-*
20 *search, demonstrations, and experiments and any other in-*
21 *formation available to him, shall develop and publish at*
22 *least annually such criteria which if applied will assure that*
23 *no employee will suffer diminished health or life expectancy*
24 *as a result of his work experience.*

1 (3) The Secretary of Health, Education, and Welfare
2 shall also conduct special research, experiments, and demon-
3 strations relating to occupational safety and health as are
4 necessary to explore new problems, including those created
5 by new technology in occupational safety and health, which
6 may require ameliorative action beyond that which is other-
7 wise provided for in the operating provisions of this Act.
8 The Secretary of Health, Education, and Welfare shall also
9 conduct research into the motivational and behavioral factors
10 relating to the field of occupational safety and health.

11 (4) The Secretary, in conjunction with the Secretary of
12 Health, Education, and Welfare, shall as soon as practicable
13 develop procedures to assure that all exposure to substances,
14 conditions, or processes he has determined or reasonably be-
15 lieves will result in dangers to health or safety is accurately
16 measured and recorded by employers.

17 In complying with the provisions of this paragraph—

18 (A) If such substance, condition, or process is not
19 covered by a standard promulgated by the Secretary, or
20 orders established by the Secretary of Health, Educa-
21 tion, and Welfare as provided under section 19(a)(2)
22 of this Act, the employer may be required by the Secre-
23 tary or the Secretary of Health, Education, and Welfare
24 to measure or record concentrations or exposures to em-
25 ployees only upon a determination that the health or

1 *safety of workers may be in danger and further informa-*
2 *tion is necessary to determine the existence of that danger*
3 *and the steps necessary for correction.*

4 *(B) If such substance, condition, or process is cov-*
5 *ered by criteria issued by the Secretary of Health, Edu-*
6 *cation, and Welfare as provided by section 19(a)(2),*
7 *the Secretary may, if he finds it necessary to meet the*
8 *purposes of this Act, require an employer to measure or*
9 *record the particular substance.*

10 *(C) If such a substance, condition, or process is*
11 *covered by a standard promulgated by the Secretary and*
12 *if the employer is found not to be in compliance with the*
13 *standard, he shall be required to measure and record the*
14 *particular substances, as provided by regulation, for the*
15 *period deemed necessary by the Secretary to assure*
16 *future compliance with such standard.*

17 *(D) Any required measurement or recording under*
18 *this subsection shall be required only where such measure-*
19 *ment is technologically feasible and the equipment is*
20 *available at reasonable cost, and shall be recorded and*
21 *shall comply with section 9(c) of this Act.*

22 *(5) The Secretary of Health, Education, and Welfare*
23 *shall publish within six months of enactment of this Act*
24 *and thereafter as needed but at least annually a list of all*

1 known or potentially toxic substances and the concentrations
2 at which such toxicity is known to occur; and shall deter-
3 mine following a request by any employer or authorized
4 representative of any group of employees whether any sub-
5 stance normally found in the working place has potentially
6 toxic or harmful effects in such concentration as used or
7 found; and shall submit such determination both to em-
8 ployers and affected employees as soon as possible. Within
9 sixty days of such determination by the Secretary of Health,
10 Education, and Welfare of potential toxicity of any substance,
11 an employer shall not require any employee to be exposed
12 to such substance designated above in toxic or greater con-
13 centrations unless it is accompanied by information, made
14 available to employees, by label or other appropriate means,
15 of the known hazards or toxic or long-term ill effects, the
16 nature of the substance, and the signs, symptoms, emer-
17 gency treatment, and proper conditions and precautions of
18 safe use, and personal protective equipment is supplied
19 which allows established work procedures to be performed
20 with such equipment, or unless such exposed employee may
21 absent himself from such risk of harm for the period nec-
22 essary to avoid such danger without loss of regular com-
23 pensation for such period.

24 (b) The Secretary of Health, Education, and Welfare is
25 authorized to make inspections and question employers and

1 *employees as provided in section 9 of this Act in order to*
2 *carry out his functions and responsibilities under this section.*

3 (c) *The Secretary is authorized to enter into contracts,*
4 *agreements, or other arrangements with appropriate public*
5 *agencies or private organizations for the purpose of conduct-*
6 *ing studies related to the establishing and applying of occu-*
7 *pational safety and health standards under section 7 of this*
8 *Act. In carrying out his responsibilities under this subsection,*
9 *the Secretary and the Secretary of Health, Education, and*
10 *Welfare shall cooperate in order to avoid any duplication of*
11 *efforts under this section.*

12 (d) *The Secretary, after consultation with the Secretary*
13 *of Health, Education, and Welfare, and with the appropriate*
14 *official in each State as duly designated by such State, shall*
15 *establish such accident and health reporting systems for em-*
16 *ployers and for the States as he deems necessary to carry out*
17 *his responsibilities under this Act.*

18 (e) *Information obtained by the Secretary and the*
19 *Secretary of Health, Education, and Welfare under this sec-*
20 *tion shall be disseminated by the Secretary to employers and*
21 *employees and organizations thereof.*

22 TRAINING AND EMPLOYEE EDUCATION

23 SEC. 20. (a) *The Secretary of Health, Education, and*
24 *Welfare, after consultation with the Secretary of Labor and*

1 with other appropriate Federal departments and agencies,
 2 shall conduct, directly or by grants or contracts (1) educa-
 3 tion programs to provide an adequate supply of qualified
 4 personnel to carry out the purposes of this Act, and (2) in-
 5 formational programs on the importance of and proper use
 6 of adequate safety and health equipment.

7 (b) The Secretary is also authorized to conduct (di-
 8 rectly or by grants or contracts) short-term training of per-
 9 sonnel engaged in work related to his responsibilities under
 10 this Act.

11 (c) The Secretary, in consultation with the Secretary
 12 of Health, Education, and Welfare, shall provide for the
 13 establishment and supervision of programs for the educating
 14 and training of employers and employees in the recognition,
 15 avoidance, and prevention of unsafe or unhealthful working
 16 conditions in employments covered by this Act, and to con-
 17 sult with and advise employers and employees, and organiza-
 18 tions representing employers and employees as to effective
 19 means of preventing occupational injuries and illnesses.

20 GRANTS TO THE STATES

21 SEC. 21. (a) The Secretary is authorized, during the
 22 fiscal year ending June 30, 1971, and the two succeeding
 23 fiscal years, to make grants to the States which have desig-
 24 nated a State agency under section 17(c) to assist them
 25 (1) in identifying their needs and responsibilities in the area

1 of occupational safety and health, (2) in developing State
2 plans under section 17, or (3) in developing plans for—

3 (A) establishing systems for the collection of infor-
4 mation concerning the nature and frequency of occupa-
5 tional injuries and diseases;

6 (B) increasing the expertise and enforcement capa-
7 bilities of their personnel engaged in occupational safety
8 and health programs; or

9 (C) otherwise improving the administration and
10 enforcement of State occupational safety and health laws,
11 including standards thereunder, consistent with the objec-
12 tives of this Act.

13 (b) The Secretary is authorized, during the fiscal year
14 ending June 30, 1971, and the two succeeding fiscal years, to
15 make grants to the States for experimental and demonstra-
16 tion projects consistent with the objectives set forth in sub-
17 section (a) of this section.

18 (c) The Governor of the State shall designate the appro-
19 priate State agency, or agencies, for receipt of any grant
20 made by the Secretary under this section.

21 (d) Any State agency, or agencies, designated by the
22 Governor of the State, desiring a grant under this section
23 shall submit an application therefor to the Secretary.

24 (e) The Secretary shall review the application, and

1 shall, after consultation with the Secretary of Health, Edu-
 2 cation, and Welfare, approve or reject such application.

3 (f) The Federal share for each State grant under sub-
 4 section (a) or (b) of this section may be up to 90 per
 5 centum of the State's total cost. In the event the Federal
 6 share for all States under either such subsection is not the
 7 same, the differences among the States shall be established
 8 on the basis of objective criteria.

9 (g) The Secretary is authorized to make grants to the
 10 States to assist them in administering and enforcing pro-
 11 grams for occupational safety and health contained in State
 12 plans approved by the Secretary pursuant to section 17 of
 13 this Act. The Federal share for each State grant under this
 14 subsection may be up to 50 per centum of the State's total
 15 cost. The last sentence of subsection (f) shall be applicable
 16 in determining the Federal share under this subsection.

17 (h) Prior to June 30, 1973, the Secretary shall, after
 18 consultation, with the Secretary of Health, Education, and
 19 Welfare, transmit a report to the President and to Congress,
 20 describing the experience under the program and making any
 21 recommendations he may deem appropriate.

22 EFFECT ON OTHER LAWS

23 SEC. 19. (a) Nothing in this Act shall be construed to
 24 hold to be preempted, or in any manner affect any, workman's
 25 compensation law or regulation or diminish its effect in any

1 other manner the common law or statutory rights, duties, or
2 liabilities of employers and employees under any law with
3 respect to injuries, occupational or other diseases, or death of
4 employees arising out of, or in the course of, employment.

5 (b) Nothing in section 5 of this Act shall apply to
6 working conditions of employees with respect to whom any
7 Federal agency exercises statutory authority to prescribe or
8 enforce standards or regulations affecting occupational safety
9 and health.

10

AUDITS

11 SEC. 23. (a) Each recipient of a grant under this Act
12 shall keep such records as the Secretary shall prescribe, in-
13 cluding records which fully disclose the amount and disposi-
14 tion by such recipient of the proceeds of such grant, the total
15 cost of the project or undertaking in connection with which
16 such grant is made or used, and the amount of that portion
17 of the cost of the project or undertaking supplied by other
18 sources, and such other records as will facilitate an effective
19 audit.

20 (b) The Secretary and the Comptroller General of the
21 United States, or any of their duly authorized representa-
22 tives, shall have access for the purpose of audit and examina-
23 tion to any books, documents, papers, and records of the re-
24 cipients of any grant under this Act that are pertinent to
25 any such grant.

REPORTS

SEC. 24. Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of occupational safety and health, and any other relevant information, and including any recommendations to effectuate the purposes of this Act.

APPROPRIATIONS

SEC. 25. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

SEC. 26. This Act shall take effect on the first day of the first month which begins more than thirty days after the date of its enactment.

SEPARABILITY

SEC. 27. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[From the Congressional Record—House, November 23, 1970]

OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. YOUNG. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1218 and ask for its immediate consideration.

The Clerk read the resolution as follows:

91ST CONGRESS
2D SESSION

House Calendar No. 271

H. RES. 1218

[Report No. 91-1460]

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 1970

Mr. BOLLING, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 16785) to assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions, by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed three hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill as an original bill for the purpose of amendment under the five-minute rule. It shall also be in order to consider without the intervention of any point of order the text of the bill H.R. 19200 as a substitute for the said committee amendment. At the conclusion of the consideration of H.R. 16785 for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER. The gentleman from Texas (Mr. Young) is recognized for 1 hour.

Mr. YOUNG. Mr. Speaker, I yield 30 minutes to the gentleman from California (Mr. Smith), pending which I yield myself such time as I may consume.

(Mr. YOUNG asked and was given permission to revise and extend his remarks.)

Mr. YOUNG. Mr. Speaker, House Resolution 1218 provides an open rule with 3 hours of general debate for the consideration of H.R. 16785, the Occupational Safety and Health Act.

The resolution also provides that it shall be in order to consider the committee substitute as an original bill for the purpose of amendment, and it shall be in order to consider without the intervention of any point of order the text of the bill H.R. 19200 as a substitute.

Points of order were waived as to H.R. 19200, because a question of germaneness might have been raised.

Mr. Speaker, both H.R. 16785 and H.R. 19200 address themselves to the very pressing problem of safety in our industrial establishments in an effort to alleviate the appalling loss of time, manpower, and men, due to industrial accidents.

Mr. Speaker, this bill differs, as I understand it, chiefly in procedure, and in the method of application.

The purpose of H.R. 16785 is to reduce the number and severity of work related injuries and illnesses which in spite of current efforts continue at high levels, and which result in human misery and economic waste.

The bill provides needed Federal State cooperation and develops and extends Federal support in the field of industrial safety and health. Aid is given specifically in the areas of research, education, training, and regulation.

Section 6 of the bill deals with interim standards and every employer—as defined in the bill—would be required to comply with interim occupational safety and health standards promulgated by the Secretary of Labor. Interim standards may be promulgated for a maximum period of 2 years from the effective date of the legislation. They may be national consensus standards, established Federal standards in effect, or standards produced by a nationally recognized organization by other than a consensus method. In the event of conflict among standards, the Secretary shall promulgate the one which assures the greatest protection of affected employees. Before standards are promulgated, a public hearing must be afforded to interested parties. Each interim standard shall stay in effect until superseded by a rule issued under section 7 of the bill dealing with procedures for formal standards setting. Ninety days after promulgating interim standards, the Secretary must begin procedures for setting permanent ones.

Section 7 provides that the Secretary may by rule, promulgate, modify, or revoke any occupational safety and health standard. The Secretary shall institute proceedings under this section upon application in writing by an interested person, a representative of an organization of employers or employees, the Secretary of Health, Education, and Welfare, or a State or political subdivision thereof. The Secretary himself may determine that a rule should be prescribed in order to serve the objectives of the act or if he is required to do so under section 6.

An ad hoc advisory committee and a national advisory committee are established to assist the Secretary.

The Secretary is authorized to make inspections and investigations in order to implement the program; citations and/or penalties for violations are authorized; procedures for enforcement are set forth; the Secretary has authority to issue cease and desist orders to counteract imminent danger.

Mr. Speaker, I urge the adoption of House Resolution 1218 in order that H.R. 16785 may be considered.

Mr. SMITH of California. Mr. Speaker, I yield myself such time as I may require.

(Mr. SMITH of California asked and was given permission to revise and extend his remarks.)

Mr. SMITH of California. Mr. Speaker, House Resolution 1218 provides for 3 hours of debates on an open rule to consider H.R. 16785, Occupational Safety and Health Act. The rule makes H.R. 19200 in order as a substitute.

According to the report, the purpose of H.R. 16785 is to reduce the number of work-related injuries and deaths of American workers. To achieve this, the bill proposes to grant to the Secretary of Labor broad authority to promulgate safety and health standards and to enforce them by penalties, injunctive relief, onsite inspections, and the authority to close a plant which he deems to be imminently dangerous.

According to the report, each year some 14,500 Americans die due to job-related injuries or diseases; over 2 million workers are disabled annually. Over \$1,500 million is wasted in lost wages and the loss to the gross national product is estimated at some \$8 billion.

I think that we should keep in mind, however, that many States have industrial safety laws or standards, which have already been set up by their own department of labor or their division of industrial safety. Some cities and counties also have safety codes covering the performance of contractors within their jurisdiction. These city, county, and State safety orders are mandatory and punishment is prescribed for anyone who violates the safety standards or in any way obstructs or hampers any person conducting an investigation authorized by his particular jurisdiction.

Safety standards are also being set up by labor unions, who may strike a job, if they feel their standards are not being applied to all operations. The Corps of Engineers, the Bureau of Reclamation, the Bureau of Public Roads, the Atomic Energy Commission, the Air Force, and the General Services Administration all have their own safety requirements. Thus we should make certain in legislating here today that we do not unnecessarily duplicate safety standards already in existence which might make the problem even more difficult.

I spent a number of years in the field of plant protection; safety was one of our biggest concerns. But time and time again, the accident or injury was caused by the carelessness of the employee. It seemed a never-ending problem to convince the employees to abide by the regulations. Thus in legislating, it might be well to consider punishing the employee who refuses to comply with the requirements. This legislation seems to only direct the punishment toward the employer.

As previously stated, the rule makes H.R. 19200 in order as a substitute. A comparison of the committee bill, H.R. 16785 and the substitute, H.R. 19200, shows the following differences.

1. AUTHORITY OF THE SECRETARY OF LABOR

H.R. 16785 vests substantially more authority with the Secretary. He would have the power to set health and safety standards. He would also have the powers to enforce them, to issue corrective orders to those found to be in violation and to assess penalties.

H.R. 19200 divides this authority. To set health and safety standards, an independent Occupational Safety and Health Board is created. It is composed of five members, knowledgeable in the field, who are appointed by the President. It would deal solely with the setting of standards. Enforcement of such standards would remain with the Secretary of Labor; he would be charged with the responsibility as under the committee bill, of investigating alleged violations.

The substitute bill provides for a tribunal other than the Secretary to act as judge and jury. H.R. 19200 creates an independent Occupation Safety and Health Appeals Commission which will adjudicate alleged violations brought before it by the Secretary of Labor.

H.R. 16785 puts all functions, promulgation of standards, enforcement and assessment of penalties in one man, the Secretary of Labor. H.R. 19200 creates separate bodies to set standards and to adjudicate alleged violations. The Secretary would retain the power of enforcement.

2. THE GENERAL SAFETY REQUIREMENT

The committee bill has a general safety requirement which requires employers to maintain safe and healthful working conditions. This is too broad and vague and could subject employers to unfair harassment. H.R. 19200 substitutes for this vague mandate a more reasonable one, the requirement that working conditions be free from "any hazards which are readily apparent and are causing or likely to cause death or serious physical harm." Although this is a more restrictive duty, it is much more reasonably enforceable and subject to fair interpretation by enforcement bodies and employers alike.

3. DEVELOPMENT OF STANDARDS

H.R. 16785 requires hearings and involved procedural action before any standards can be promulgated in almost all cases. H.R. 19200 provides for emergency or temporary standards to be set when needed without regard to hearings and other procedural steps. Hearings would then be held to replace the temporary standards with permanent ones with all procedural safeguards retained. This flexibility seems desirable and will surely enable such standards to become effective and enforceable at an earlier date.

4. PLANT CLOSINGS

H.R. 19200 eliminates the provision of the committee's bill which would permit an inspector to close a plant immediately if he determines a situation of imminent danger to exist. As a substitute, H.R. 19200 places the authority with the district courts where a determination of factual information can be made before damage is done to a plant by closing it without prior hearing.

Mr. Speaker, I urge the Members to support the substitute. I urge adoption of the rule and reserve the balance of my time.

Mr. ANDERSON of Illinois. Mr. Speaker, will the gentleman yield?

Mr. SMITH of California. I yield to the gentleman from Illinois.

(Mr. Anderson of Illinois asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON of Illinois. Mr. Speaker, I urge adoption of House Resolution 1218 which would make in order the Steiger-Sikes substitute bill on occupational safety and health. After carefully studying both the committee bill and the Steiger-Sikes substitute, I came to the conclusion that the substitute bill is a vastly superior measure both in terms of equity and job safety. I consequently voted for this rule in the Rules Committee because it will permit a straight vote on the entire substitute package when we begin the amendment process. For these reasons, I strongly urge my colleagues to both support this rule and the Steiger-Sikes substitute at the appropriate time.

Mr. Speaker, during the course of the debate on these bills we will listen to an almost mechanical repetition of the grim statistics on job-related deaths and injuries. We will learn, for instance, that last year over 15,000 Americans were killed at work, another 2.2 million suffered disabling injuries, and that all told, 10 million job-related injuries were reported to the Bureau of Labor Statistics. There are those who will dispute the accuracy of these figures and say they are too low, and there will be others who will question the relative significance of these figures given a labor force of 80 million workers. I would only hope that we will not become so involved in this numbers game that we lose sight of the fact that we are really talking about people and not statistics; we are really talking about thousands of persons who lost spouses in job fatalities and thousands of children who lost parents. We are really talking about hundreds of thousands of people who may never work again due to disabling injuries; and we are really talking about millions of people who lost precious worktime and incurred costly medical expenses due to job injuries.

Whether the BLS figures on job deaths and injuries are accurate is not all that important to me. What is important to me is the possibility of reducing that tragic toll through equitable and effective occupational safety and health legislation. What is important to me is the possibility of providing a safer and more healthful working environment for the 80 million Americans in the labor force. For as the committee report so correctly points out, the worker's surroundings and the conditions under which he works are of crucial importance in the whole environmental question for it is in this environment that he spends one-third of his day. The air he breathes and the tools and materials he handles can pose a direct threat to his health, safety, and well-being if adequate precautions are not taken. This is really what we are talking about today in considering the need for national industrial health and safety standards.

The main question before us today is not whether there is such a need, but rather, how best to meet that need. I would, therefore, like to use the remainder of my time explaining why I think the Steiger-Sikes substitute bill offers the best approach to job safety legislation.

The most apparent and striking differences between the committee bill and the substitute bill are in the assignment of authority under the act. Whereas the committee bill would grant the Secretary of Labor broad authority to promulgate, monitor, and enforce safety standards, the substitute bill offers a more equitable and balanced approach to the implementation of a national occupational safety and health program. The substitute bill would establish a five-member Occupational Safety

and Health Board to be appointed by the President for the sole purpose of setting standards; and a special three member Occupational Safety and Health Appeals Commission for the sole purpose of adjudicating alleged violations. Both the committee bill and the substitute bill are alike in granting the Secretary of Labor the authority to inspect and investigate work areas.

Mr. Speaker, I think the division of responsibilities as provided for in the substitute bill is a more responsible and realistic approach to an equitable and effective job safety program. I know there will be those who will point to other precedents for vesting both the standard-setting and standard-enforcing authority in a single person or agency. The examples of our various Federal regulatory commissions will be cited. Let me only point out that one of the major criticisms that has been leveled against these commissions has been the problems involved in both setting and enforcing regulations. And yet the committee bill would in effect set up an identical situation by making the Secretary of Labor the prosecutor, judge, and jury all in one. Another criticism that has been leveled against our regulatory agencies has been the charge that they too often become spokesmen and even protectors of the interests they are supposed to regulate. Now it seems to me that we run the same risk in the committee bill by giving sole authority to the Secretary of Labor who has traditionally been the voice of labor in the administration. It would, therefore, seem much more reasonable and equitable to give an independent board of safety professionals the power to set standards, and a separate appeals commission the power to adjudicate alleged violations. In this way I think we can best insure both safety for the worker, and maximum equity for the employer and employee alike.

Another controversial provision of the committee bill is the so-called general duty clause of section 5 which states:

Each employer shall furnish to each of his employees employment and a place of employment which is safe and healthful.

Now this language is so broad, general, and vague as to defy practical interpretation let alone responsible enforcement. The substitute bill, on the other hand, is specific in its employer duty provision by stating:

Each employer shall furnish to each of his employees employment and a place of employment which are free from any hazards which are readily apparent and are causing or are likely to cause death or serious physical harm to his employees.

Even the committee bill in the other body, which in most respects is identical to this committee bill, specifies "a place of employment free from recognized hazards so as to provide safe and healthful working conditions." I just do not see how there can be any responsible justification for the broad general duty requirement in this bill. It is unrealistic, irresponsible, and unenforceable.

Another strong feature of the substitute bill is its provision for the immediate promulgation of emergency temporary standards by the Board where there is grave danger to workers resulting from toxic substances and new processes. The committee bill, on the other hand, requires a hearing before any standards can be promulgated, no matter how urgently they may be needed. In like fashion, the substitute bill also provides for the immediate promulgation by the Board of national consensus standards and existing Federal standards without invoking

APA procedures. In both instances of course, the temporary emergency standards and the consensus standards would be replaced once permanent standards have been set under APA procedures. But the important point is that the substitute bill provides immediate protection to workers which the committee bill does not.

Finally, whereas the committee bill gives an inspector authority to close down a plant operation on the spot if he determines an imminent danger exists, the substitute bill would leave this up to the district courts. I think that going immediately to the courts for such an injunction is a more responsible and equitable procedure than granting this arbitrary power to an inspector.

Mr. Speaker, while I could cite other differences between the two bills that would further strengthen the case for the substitute bill, I think I have touched upon the main ones. I think it is extremely unfortunate that there was not more of a willingness to work for an equitable and effective compromise in committee for as I said at the outset of my remarks, there is general agreement on the need for a strong occupational safety and health bill. But beyond the agreement on such a need, there is also a great need for a bill which would provide the best possible program—one which will guarantee a safe and healthful working environment for the worker while at the same time guaranteeing fairness and due process to the employer. I think the substitute bill best addresses itself to those two objectives, and I therefore urge my colleagues to join me in supporting it.

Mr. YOUNG. Mr. Speaker, I ask that the record reflect that when I yield, I yield for purposes of debate only. I yield 5 minutes to the gentleman from Indiana (Mr. Madden).

(Mr. MADDEN asked and was given permission to revise and extend his remarks.)

Mr. MADDEN. Mr. Speaker, this rule will bring before the Congress the long-delayed legislation H.R. 16785, which, if enacted without crippling amendments, will protect millions of American workers who are daily exposed to unnecessary hazards in carrying out their duties with their employers.

Through oversight, negligence, and, in most cases, management's refusal to install proper protection devices, machinery, and avoid unnecessary exposure to hazardous conditions, management has inflicted injuries, impaired health, and directly or indirectly caused death to millions of our people who are engaged in our production economy. By reason of delay in protective legislation, both workers and management have lost many hours, days, weeks, and even years of valuable production which, otherwise has deterred the Nation's progress and economy.

This legislation, if enacted, will also bring about a stimulation for further production among employers and employees and will greatly affect and expand existing production by providing safe and healthy working conditions in industries, factories, and so forth. This bill will also expand research in the field of occupational safety and health by developing innovations, methods, techniques, and approaches for dealing with occupational safety and health problems. It will also provide for training programs to prevent accidents and to increase the competence of personnel in the field of occupational safety and health. It will encourage States to assume the fullest responsibility for the

administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in inaugurating improvements to their needs and responsibilities in the areas of **occupational safety and health.**

This bill will authorize the Secretary of Labor to hold hearings on violations of standards and issue orders for correction and such orders to be subject to judicial review. It gives the Secretary authority, at his discretion, to set such penalties up to \$1,000 per violation per day. Other provisions of the bill would authorize research into such health and safety problems, and set up an advisory committee to assist in the development of standards which would apply to various industries **according to each category.**

Extended hearings were held on this legislation by the Education and Labor Committee and testimony was presented by both management and employees along with prominent individuals and organizations urging the necessity of life, health, and safety protection, not only for management and employees but the public generally. It is astounding that approximately 14,500 workers have been killed and almost 2,200,000 injured each year as a result of hazardous working conditions, most of which can be curbed or prevented by the enactment of this bill.

I hope this legislation will be passed by a large majority and **without any crippling amendments.**

Mr. Young. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. PERKINS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 16785) to assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Kentucky.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the committee of the Whole House on the State of the Union for consideration of the bill H.R. 16785, with Mr. Corman in the chair.

The clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Kentucky will be recognized for 1½ hours, and the gentleman from Wisconsin (Mr. Steiger) will be recognized for 1½ hours.

The Chair recognizes the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the bill H.R. 16785, which we are considering today is long overdue. It is a bill designed to reduce death in the working place and bring to a minimum the crippling injuries and job-related illnesses which increasingly affect workers in this country.

Occupational health and safety is a national problem affecting every State, region, and industry. The full extent of this grim situation is not known. If there were adequate and uniform reporting the Nation would be shocked. Such partial information as we have, however, about the extent of occupational deaths, injuries, and illnesses is shocking enough, 14,000 working people were killed on the job in 1968. Another 2.2 million were reported to have suffered disabling injuries. The U.S. public health service estimates that there were at least 390,000 occupational illnesses last year. These figures may reflect less than one-half, or perhaps less than one-quarter of the actual human devastation. More workers are being killed on the job than are being killed in Vietnam. Five times as many workdays are being lost because of occupational accidents as are lost because of work stoppages related to labor-management differences.

Some of the hazards that the workers face are old. Lead, mercury, zinc, silica dust were threats to craftsmen in antiquity. Some of the threats such as carbon monoxide and carbon tetrachloride are products of the earlier stages of our industrial age.

Clearly, however, the increasing threat to the safety and health of the workingman is a function of the runaway technological and industrial revolution. The new techniques, the new processes, the new machinery, the new environments, new chemical and physical agents are being introduced into the working place with accelerating frequency presenting new hazards to the worker.

We have done far too little to deal with safety and health hazards which have been well known for years. We can no longer ignore the ever-increasing dangers faced by the working men and women of this country.

The laws, standards, enforcement, research, the manpower and money resources that have been directed at occupational safety and health are increasingly inadequate to deal with the problem.

Immediate passage of an occupational health and safety bill is imperative. Because it is so crucial to the welfare of working men and women, our committee, under the leadership of the gentleman from New Jersey (Mr. Daniels) has prepared and will offer a series of amendments. These amendments are put forward in the spirit of compromise that has always characterized the House Committee on Education and Labor in its consideration of important legislation.

The following amendments will be offered to the committee substitute and will have the support of the majority of the committee:

First. The open-ended general duty provision will be modified to make clear the intention that employers only be required to provide employment and a place of employment that is free from recognized hazards. There will be no penalty for violation of the general duty provision under this amendment.

Second. The authority of the Secretary acting through an inspector to close down a plant or a plant operation which presents an imminent danger situation is deleted. Under the amendment he will have to seek a court order to bring about a shutdown.

Third. The provision that would have permitted an employee to absent himself from exposure to a toxic substance without loss of pay, the so-called "strike with pay" provision, has been deleted.

Fourth. The fears of employers that the monitoring provisions would impose a heavy burden upon them have been recognized and substantial modifications of those portions of the bill will be offered.

Fifth. Another amendment would modify the Construction Safety Act so as to include contractors and employees performing non-Government as well as Government work.

These amendments and these compromises are offered in recognition of the imperative nature of the situation and of the desperate need of America's working men and women. I would hope, in view of the compromises which we have offered removing the fears and misinterpretations that some have held, that all Members of the House will find it possible to support the committee bill with the amendments I have specified.

The bill, H.R. 16785, would provide a congressionally recognized right to every man and woman who works to perform that work in the safest and healthiest conditions that can be provided. H.R. 16785 provides a broad and effective framework for action by the Federal Government using the best resources of the States, private individuals, and labor to meet the challenge of illness and injury.

The Secretary of Labor is authorized to establish interim as well as permanent standards and in certain situations he can establish emergency temporary standards. After notice and public hearing at which all interested persons are afforded an opportunity to make their views known, the Secretary of Labor is authorized to promulgate interim standards to be in effect for a maximum period of 2 years. These interim standards may be based on existing national consensus standards, established Federal standards, or other proprietary standards.

Permanent standards or modifications of permanent standards are to be promulgated by the Secretary after being considered by an advisory committee, and after hearings under the Administrative Procedures Act. Emergency temporary standards are authorized where employees are exposed to a grave danger from exposure to toxic substances or new hazards, and where such an emergency standard is necessary to protect the employees from such grave dangers.

The act provides for citations to be issued where there are violations of standards, rules or orders of the Secretary. Where the violation results in a serious danger a mandatory penalty is imposed. In other cases the penalty is discretionary. Citations must be in writing and must state specifically what standard or other requirement is alleged to have been violated as well as the time within which the violation must be corrected. The enforcement process provided calls for hearings under the Administrative Procedures Act and a court review should the employer want it.

Where the violations are willful and repeated, civil penalties of up to \$10,000 are provided. In connection with the citation for a serious

violation, that is, where the violation results in substantial probability that death or serious injury could result, a civil penalty of up to \$1,000 is provided.

States are permitted to assert jurisdiction under State law where there is no standard in effect under this act. States are also permitted to submit State plans for the development and enforcement of occupational safety and health standards under this act. If the Secretary finds that the State plan provides an adequate agency with sufficient authority and resources to carry out the purposes of this act, he may approve the State plan and the State will have a prime responsibility for the enforcement of the Act.

H.R. 16785 if enacted will result, I feel certain, in a substantial reduction in work-related death, illness, and injury. It is an eminently just and fair bill, protecting the interests of worker and employer alike.

I most strongly urge support of this badly needed legislation.

Mr. ANDERSON of Illinois. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from Illinois.

Mr. ANDERSON of Illinois. I was interested in the observation the gentleman made that there will be no effort to assess a penalty under the so-called general duty clause of the bill. How would that section then be enforced? Would it be merely by the issuance of a citation calling attention to the alleged defect?

Mr. PERKINS. Certainly it would be by citation.

Mr. ANDERSON of Illinois. If the gentleman will yield further, there would, however, be a penalty that would attach if that citation or any order issued pursuant to the citation were not complied with.

Mr. PERKINS. Just for violation of the duty there will not be any penalty attached. That is where we propose to make the modification.

Mr. DANIELS of New Jersey. Mr. Chairman, will my distinguished chairman yield?

Mr. PERKINS. I yield to the gentleman from New Jersey.

Mr. DANIELS of New Jersey. Under the amendment I propose to offer, when a citation is issued and the employer is given a certain period of time to correct the hazard, if he fails to do so then a penalty may be imposed. Otherwise no penalty would be imposed.

Mr. PERKINS. Naturally an employer cannot refuse to make the corrections, under the substitute here.

Mr. STEIGER of Wisconsin. Mr. Chairman, I yield myself 20 minutes.

(Mr. Steiger of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. STEIGER of Wisconsin. Mr. Chairman, we are considering today legislation which will affect virtually every man, woman, and child in this country who holds a job or operates a business now or in the future.

Every Member of this body is aware of the awful toll on-the-job accidents take each year. In the last 25 years more than 400,000 Americans were killed by work-related accidents and disease and close to 50 million more suffered disabling injuries on the job. Not only has this resulted in incalculable pain and suffering for workers and their families, but such injuries have cost billions of dollars in lost wages and production.

The issue before us today is not whether we should put the resources of the Federal Government to work on this problem, but how best to do it.

You will be asked to choose between two pieces of legislation—H.R. 16785, which was reported by the Committee, and the Education and Labor Committee, and H.R. 19200, which was first offered in almost identical form in the Education and Labor Committee as a bipartisan compromise by the gentleman from Maine (Mr. HATHAWAY) and myself.

Some confusion may have arisen, Mr. Chairman, because of action taken in the other body last week with regard to this legislation. Let me set the record straight.

S. 2195, as reported by the Labor and Public Welfare Committee, was a compromise. It was not identical to H.R. 16785 which we have before us today. Some groups have attempted to talk about the Daniels bill and the Williams bill as if they were identical, but this is simply not the case. The other body was successful to a degree in reaching a compromise in committee by incorporating some features of the Steiger-Sikes substitute in their reported bill.

In our Education and Labor Committee, however, we reached no such compromise. H.R. 16785 represents a bill that from start to finish was drafted, proposed and approved by one side of our committee. The best attempt at compromise initiated by the gentleman from Maine (Mr. HATHAWAY) and myself failed on a 15 to 12 vote in the full committee.

I still believe we put together a good compromise, and thus the gentleman from Florida (Mr. SIKES) and I will offer the substitute here on the floor as an alternative to the committee-reported bill. H.R. 19200, the substitute, is a bipartisan compromise between what the administration originally proposed and what the Democrats on our committee proposed. It is in that spirit of compromise that we offer it for consideration.

Some of the rhetoric surrounding this legislation has been incorrect and misleading. It has been charged that the Steiger-Sikes substitute is weak; that it attempts to whitewash occupational health and safety; that its passage will in fact encourage rather than discourage industrial accidents.

It must be made crystal clear at the outset that the Steiger-Sikes substitute is a strong bill. It in no way downgrades occupational health and safety protection for the workers of this country and there is no evidence to support such a charge.

The substitute has the same coverage as H.R. 16785. Both bills have almost identical provisions with regard to the role of the States; Federal employee safety; research; employee training; grants to the States; the confidentiality of trade secrets; variations, tolerances, and exemptions; and the relationship of the act with regard to other Federal programs.

Most importantly, the basic ingredients of H.R. 16785 are included in the Steiger-Sikes substitute: mandatory standards, inspections and enforcement, penalties for violations, a penalty for circumstances where the danger of harm in a workplace is imminent, emergency standards for toxic or hazardous new substances.

Where these two bills differ is in the procedural structure provided for carrying out the responsibilities created under the legislation.

This is the issue. The law we pass today must be strong, effective, workable, and fair. It must have the respect and confidence of workers and employees alike. It must guarantee to each American worker a mechanism for developing and enforcing safe and healthful working conditions; and it must guarantee to each employer objectivity, fairness, and due process.

In my opinion, the Steiger-Sikes substitute will accomplish our objectives in this manner. H.R. 16785 will not.

SEPARATION OF POWERS

The most basic and most important difference between H.R. 16785 and the Steiger-Sikes substitute is the method of administering the functions set forth under the act. H.R. 16785 vests authority for the promulgation of standards, inspection and investigation of complaints, the prosecution of cases, and the adjudication of cases totally in the hands of the Secretary of Labor. The substitute separates these functions to provide for a more effective, efficient, and equitable administration of the law.

OCCUPATIONAL HEALTH AND SAFETY BOARD

In recognition of the importance and nonpartisan nature of occupational health and safety, the substitute establishes a new, top echelon independent occupational safety and health board to set standards. The board would consist of five members appointed by the President solely because they are high-caliber professionals in the field of occupational safety and health. There are no business seats or labor seats. This is to be a nonpartisan group of professions.

The board has been painted as probusiness and antilabor. The testimony before our committee refutes these charges. Recommendations for an independent, standards-setting body were made by such prestigious professional organizations in the field of safety and health as the National Safety Council, the American Industrial Hygiene Association, the Industrial Medical Association, the American Academy of Occupational Medicine, the American Society of Safety Engineers, as well as State health and industrial safety agency representatives.

In addition, we now have the report of the National Commission on Product Safety which was appointed by President Johnson to recommend programs to protect consumers from product hazards. The Commission has strongly recommended that Federal product safety standards be established by an independent Federal authority. The reasons stated by the Commission are most applicable to the field of occupational health and safety, and I quote:

Statutory regulatory programs buried in agencies with broad and diverse missions have, with few exceptions, rarely fulfilled their mission.

The reasons for their weaknesses include lack of adequate funding and staffing because of competition with other deserving programs within any agency; lack of vigor in enforcing the law caused by an absence of authority and independence in some Federal administrators; and a low priority assigned to programs of low visibility.

When a Federal agency must take up substantial and controversial issues of consumer safety and economics, we believe it needs independent status.

Independence can be furthered by appointment of Commissioners on a non-partisan basis * * *

Another reason for our recommendation of an independent commission stems from our own experience of the past 2 years * * * Visibility has aided us in communicating public needs to business. We believe that a highly visible consumer product safety commission will have the potential to deal formally and at arm's-length with the industries it must regulate in behalf of the public.

The high visibility of a vigorous independent commission would also be a constant reminder of the Federal presence and would itself stimulate voluntary improvement of safety practices.

It has been argued that only the Secretary of Labor can give the workingman adequate protection. But there are ample precedents for creating agencies and making them independent of the Department of Labor even though those agencies are concerned with matters affecting the relationship of man to his job. Examples of these independent agencies are the Federal Mediation and Conciliation Service, the National Labor Relations Board and the National Mediation Board.

It has been argued, Mr. Chairman, that Congress has often placed all the functions of standard setting, inspection and enforcement in one department of the agency. Opponents of the Board cite such acts as the Longshoremen's and Harbor Workers' Safety Act, the Coal Mine Safety Act, the Federal Railroad Safety Act and others. I must point out that each of these acts deals with a specific area of concern and is limited in application. The occupational health and safety legislation before us today deals with every conceivable type of industry and business and I submit that such a responsibility merits and needs **a different administrative approach.**

It has been argued that multimember commissions or boards are not given to decisive action and make it impossible to pinpoint responsibility and accountability. I agree that this has been the case in some agencies which have diversified responsibilities for setting regulations and enforcing them. However, the Occupational Safety and Health Board has one and only one responsibility—the promulgation of standards. It cannot duck this function, and to make it even more responsible, the substitute mandates that when either the Secretary of Labor or the Secretary of Health, Education, and Welfare requests the setting or modification of a standard, the Board must commence standard setting procedures within 60 days after the request is made. To argue as some do that a board is appointed by and serving at the pleasure of the President will not be responsive overlooks the fact that this mechanism actually pinpoints responsibility in the Chief Executive. As a matter of fact the Board membership will be at least as responsive as the Secretary of Labor who is also appointed by and serves at the pleasure of the President.

INSPECTIONS AND CITATIONS

In both H.R. 16785 and the substitute, the Secretary of Labor makes inspections and investigations under the act, determines alleged violations and issues citations. There is a very real difference between the two bills, however, the power granted to the individual inspector on the job site. Under H.R. 16785, the inspector issues the citations at the end of his visit and these citations are posted. The substitute is carefully drawn to insure that an inspector is not given virtually unlimited power. Citations are issued by the Secretary and the inspector. These citations must then be posted at the workplace, but the review of the inspector's work insures that the citations issued will be for valid violations enforceable under the act.

ENFORCEMENT

Under the substitute, all appeals of citations are handled by an Occupational Safety and Health Appeals Commission, composed of three members appointed by the President and confirmed by the Senate. The Commission's hearing examiners conduct the hearings and the Commission issues corrective orders and assesses penalties.

The Appeals Commission completes the separation of powers under the substitute bill.

I cannot emphasize enough, the importance of the separation of authority provided by the substitute. I ask each of you to concentrate again on the ramifications of this law and the reach of this law into countless numbers of workplaces throughout the country. It will involve millions of employees and tens of thousands of employers. We must create an administrative mechanism which fits the challenge. Standards must be effective. They must be fair. They must be enacted without undue delay. They must be kept up to date. A Board of professional safety and health experts with the sole responsibility of standard setting and review is the very best way to achieve these objectives.

Enforcement must be equally effective. It must be swift. It must be just. An Appeals Commission of highly qualified officials which has as its sole function enforcement of this law is the best way to achieve these objectives.

GENERAL DUTY

Another defect of H.R. 16785 which I regard as especially serious is its very broadly worded and vague general requirements that employers maintain safe and healthful working conditions. I believe it is grossly unfair to employers to subject them to the possibility of a civil penalty for not complying with a general requirement as vague as a mandate "to do good and avoid evil." How will an employer in today's complex and highly technical industrial circumstances know exactly what is expected of him, and what he may be doing incorrectly which may result in his being penalized? It is exactly this complexity and the uncertainty which goes with it, that has led us to provide carefully designed procedures for issuing specific safety and health standards. With specific standards it will be apparent to the employer what is expected and required of him: and specific standards will also serve as the necessary guide for inspectors in properly carrying out their investigatory duties.

A vague general requirement like the one contained in H.R. 16785 was one of the first provisions which the Committee struck when it considered similar legislation in the 90th Congress. Why it has now seen fit to restore such a requirement is not at all clear. One argument which has been relied upon by those who presently favor H.R. 16785 is that a similar general provision is found in the Walsh-Healey Act and in the Service Contract Act. This argument, Mr. Speaker, is unpersuasive.

The Walsh-Healey and Service Contract Acts are concerned with the duties of those who contract with the Government. Where a person freely contracts with the Government, he assumes the responsibility for maintaining safe and healthful working conditions as provided for in those two procurement-related statutes. While the language of the requirement in those two laws may be general, its actual application

could hardly be described as "general" since coverage under those acts extends only to circumstances to which the supply and service contracts, themselves, apply. Moreover, I understand from the Labor Department that the general requirements of those two statutes have never been enforced in the absence of specific standards.

Another argument offered in support of the committee bill's general requirement is that it is comparable to the general duty of care imposed in the law of torts. This argument is also unpersuasive. Tort law is concerned with providing for after-the-fact payment of damages by one whose negligent act actually caused an injury. To borrow merely the isolated general duty of care from the field of tort law and impose it, along with the sanctions of civil penalties, to provide a before-the-jury method of preventing the occurrence of industrial accidents, strikes me as incongruous. In tort law the general duty of care does not exist in isolation. It is surrounded by other factors which sharply limit it, and thus give it real meaning and practical application in the field of law in which it is used. Centuries of Anglo-American case law have refined the general duty of care through the judicial development of doctrines to serve as guides for the careful application of the general duty. Also, elaborate defenses have been developed to limit its otherwise unjust application. If we are to include any sort of general-care duty in this legislation, Mr. Chairman, we should also limit its terms so that persons upon whom it would impose a duty are not unjustly held accountable for situations of which they are completely unaware.

The substitute recognizes that we are not always going to have precise standards to cover all circumstances. Therefore a general requirement is included, but it is limited and made more specific by requiring employers to maintain working conditions which are free "from any hazards which are readily apparent and are causing or are likely to cause death or serious physical harm." It is patently unfair to require employers to supply every conceivable safety and health need for which no specific standards exist to guide them. By limiting this "general duty" requirement to apparent dangers, the substitute overcomes this element of unfairness and at the same time provides protection in serious situations which may not be covered by a precise standard.

IMMINENT DANGER SITUATION

Both the substitute and H.R. 16785 provide for closure of operations in cases where imminent danger exists, that is, a situation in which death or serious physical harm could result if a condition is not corrected.

H.R. 16785 gives an inspector in the field full power to close down any industrial plant or its operations, if in the inspector's individual judgment there exists an imminent danger to employees.

The substitute requires the inspector to inform both the employer and the employee that he feels imminent danger exists and that he is asking the Secretary of Labor to immediately get a temporary restraining order to close down the dangerous area. Federal judges can be reached at any time of the day or night. This is not a delaying tactic. It puts the enforcement of the inspector's order in the court, which will ultimately have jurisdiction under both bills. It provides swift enforcement and due process.

Mr. HATHAWAY. Mr. Chairman, will the gentleman yield here on the imminent danger point?

Mr. STEIGER of Wisconsin. I yield to the gentleman from Maine.

Mr. HATHAWAY. Under the Daniels bill, even if an inspector comes into a factory and says, "I am ordering you to shut down a certain section, because of the danger involved," the employer could simply say, "I refuse to do it," and then the inspector would have to go to court.

So any employer who really want to have this done through a court order can actually do it by simply refusing to obey the inspector's mandate in the first place, because the inspector does not have any enforcing power on his own.

Mr. STEIGER of Wisconsin. I think the gentleman is correct in his analysis, but under the committee bill, as we have it before us, it could subject the employer to a penalty which he may decide he would not want to bear.

Mr. HATHAWAY. What penalty? A penalty for refusing to close down?

Mr. STEIGER of Wisconsin. Yes.

Mr. HATHAWAY. That is under the gentleman's bill or under the Daniels bill?

Mr. STEIGER of Wisconsin. I am talking about the Daniels bill.

Mr. HATHAWAY. I do not think there is any penalty for refusing to comply with the inspector's order.

Mr. DANIELS of New Jersey. Mr. Chairman, will the gentleman yield?

Mr. STEIGER of Wisconsin. I yield to the gentleman from New Jersey.

Mr. DANIELS of New Jersey. Mr. Speaker, I will say quite affirmatively I propose to offer an amendment to eliminate the provision referred to in the Daniels bill as the imminent danger provision, so that an inspector would have to go to court and obtain a cease-and-desist order and an injunction in order to close the plant down.

Mr. STEIGER of Wisconsin. I thank the gentleman from New Jersey.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. STEIGER of Wisconsin. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, the gentleman is altogether correct. If an inspector makes a determination that imminent danger exists in the particular plant, the inspector has no enforcing power, and, therefore, cannot close that plant down. Even under the language in the committee bill, if the employer resists the recommendation of the inspector, the inspector would have to go to court. As the gentleman from New Jersey, (Mr. Daniels) stated, assuming that the substitute offered by the gentleman from Wisconsin is voted down, we will make this as clear as a crystal in the amendment Mr. Daniels will offer.

Mr. STEIGER of Wisconsin. Mr. Chairman, my hope, of course, may I say to my chairman, is that the substitute will not be voted down, but that it will, in fact, be agreed to, even more so now that we see what is happening to the Daniels bill as it begins to come closer and closer to the substitute.

Mr. HATHAWAY. Mr. Chairman, will the gentleman yield?

Mr. STEIGER of Wisconsin. I yield to the gentleman from Maine.

Mr. HATHAWAY. Mr. Chairman, I want to clear up my point that it really does not make any difference if we leave the Daniels bill as it is with respect to the imminent danger provision, provided the chairman

and I are correct, that there is no penalty for simply disobeying the recommendation of the inspector if he thinks there is imminent danger. If we leave it the way it is, it may have the salutary effect of not bottling up the courts with close orders, because I believe in most instances the manufacturer would be willing to close down that part of the factory anyway, so I, for one, am not going to support the amendment which will be offered to the Daniels bill.

I thank the gentleman for yielding.

Mr. SIEGEL of Wisconsin. The gentleman is welcome.

The standards established under this legislation are going to largely determine the effectiveness of the legislation. H.R. 16785 has some serious deficiencies which actually impede effective standard setting. These have been overlooked in the debate over other issues, but they are extremely important. There are three types of standards prescribed by both bills—permanent, temporary emergency, and early.

The substitute bill provides very simply that the Board sets standards according to the procedures of the APA. This requires that a hearing will be held so that the views of interested persons can be heard; and standards will be based on the substantial evidence developed in the hearing process.

H.R. 16785 would also set permanent standards through APA hearings, but before these hearings even begin, it would be necessary to go through a complicated maze of procedures involving assorted ad hoc advisory committees. Whenever the Secretary seeks to set a standard under H.R. 16785, he is required to appoint an advisory committee. This advisory committee may have up to 2 months to submit its recommendations to the Secretary and the Secretary may not begin any hearings until he has afforded the advisory committee the prescribed time to submit its recommendations. Although the Secretary may shorten this period, the committee bill also provides that he may extend it.

After these excessive time periods run, H.R. 16785 affords the Secretary up to 4 months to schedule a hearing to be held at an indefinite future date on the recommendations of the advisory committee.

All this adds up to the fact that under H.R. 16785 the Secretary may take well over a year to arrive only at the hearing stage.

On the other hand, the substitute provides very simply that the Board set standards according to the procedures of the APA. The hearing stage is the starting point for setting permanent standards under the substitute. Under the substitute there would be no inevitable time delays occasioned by the advisory committees, since the substitute does not mandate the use of such committees; the substitute only permits their use at the Board's discretion.

TEMPORARY EMERGENCY STANDARDS

The substitute also recognizes that extraordinary situations will arise in which the Board has to act quickly in promulgating certain standards, and should not delay in any way doing so. Therefore, it provides that where employees are in danger from toxic substances or new hazards resulting from the introduction of new processes, the Board will issue emergency temporary standards. These standards

would be promulgated by the quickest means possible; that is, they would become effective immediately upon publication in the Federal Register.

Because these standards would be promulgated without hearings, the substitute provides that they will only stay in effect until replaced by permanent standards which the Board is required to issue within 6 months after the emergency temporary standards are issued.

H.R. 16785 also provides for the promulgation of what it describes as emergency temporary standards. But the problem with these standards under the reported bill is that such standards are neither "emergency" nor are they necessarily "temporary." Under the reported bill, the Secretary would first conduct an inspection; and after that, the so-called emergency temporary standards would not become effective until 30 days after their publication in the Federal Register. Further, under H.R. 16785 the emergency temporary standards remain in effect for 6 months or until replaced by permanent standards. Therefore, it is possible that standards purported to be "temporary" could stay on the books for an inordinately long period of time. This means, Mr. Chairman, that under the reported bill the so-called emergency temporary standards would in reality be semipermanent standards without their ever having been subject to a hearing which is necessary for the promulgation of permanent standards.

EARLY STANDARDS

The substitute provides that within the first 3 years of the new act's life, the Board must promulgate national consensus standards and already existing Federal standards where these two types of standards will assure safer and more healthful working conditions. Because such standards have already been scrutinized either through the consensus-method or through procedures provided under Federal law, the substitute bill requires no hearings or other APA procedures for promulgating them under the new act; they simply become effective upon publication in the Federal Register. The national consensus standards would remain in effect until superseded by permanent standards as replacements.

H.R. 16785 also provides for promulgating national consensus standards and existing Federal standards. But here, again, Mr. Chairman, the committee bill has a built-in unnecessary time-delay for promulgating these standards. It would require a hearing to be held before these standards could be promulgated. What earthly reason could there be for requiring a hearing before promulgating standards which have already been through either full consensus-method procedures or Federal rulemaking procedures? This question is even more puzzling when one bears in mind that the bill provides that these standards must be subject to the permanent standard-setting process within 90 days after promulgation.

The committee bill also provides for the issuance of a third type of standard: that is, the national standard which has been developed by some method or other which is not a consensus method. The substitute, on the other hand, wisely does not provide for the adoption of standards where we do not know the means which may have been used to develop them. I believe the reason for this is obvious. If we are going

to adopt as Federal law any standards which have been developed largely by the private sector, then I firmly believe that we should feel completely secure about where they come from and how they were fashioned. We should, for example, know that they came from the respected and well-known American National Standards Institute which uses the consensus method to develop its standards. To open the door, as H.R. 16785 would do, to any organization using any sort of method to produce a standard would in my opinion be unwise.

CITATIONS

The concept of issuing citations is a sound one, but H.R. 16785 goes about it in an unnecessarily complicated way. It is difficult to understand why the reported bill ties the issuance of citations to "serious danger" in some cases and not in others. The substitute simplifies this by requiring the Secretary to issue a citation in every instance where there is a violation of the act's requirements, unless of course, it is de minimis.

OCCUPATIONAL HEALTH AND SAFETY STATISTICS

In the hearings on this legislation, we heard the constant and well justified complaint that one of the great shortcomings in the field of occupational safety and health is the lack of an effective statistical program to provide an accurate picture of the scope and true nature of the complex problems of industrial injuries and illnesses. H.R. 16785 has only scattered provisions touching upon what would be needed in terms of reporting requirements for the purpose of such analysis. The substitute, however, contains a separate section providing a complete statistical program, including Federal grant authority to assist the States in their efforts in the statistical field. These provisions for an effective statistical program, which are included in our bill, were carefully worked out with the cooperation and assistance of the Bureau of Labor Statistics.

FINANCIAL ASSISTANCE TO SMALL BUSINESS

H.R. 16785 unfortunately has no provisions for providing financial assistance to small businessmen who will need such help to overcome some of the costs that are going to be occasioned by the enactment of this legislation. The substitute amends the Small Business Act to provide this needed assistance.

CONSTRUCTION SAFETY

In keeping with the recent policy of Congress with respect to protecting construction workers, the substitute places all construction workers under the protection of the Construction Safety Act, Public Law 91-34. Therefore, the substitute expressly provides that the Occupational Safety and Health Act would not apply to employers in construction work. It amends the Construction Safety Act to provide that all construction workers would come under the protection of standards developed under the procedures of the Construction Safety Act. Cases of alleged violations of construction safety and health standards, however, will be brought before the Occupational Safety

and Health Appeals Commission, created under the Occupational Safety and Health Act. The Commission's orders would be enforced in the same way as they are enforced in the Occupational Safety and Health Act. The additional sanctions of contract debarment and cancellation now provided for under the Construction Safety Act would remain.

I believe that placing all construction employers under the recently enacted Construction Safety Act is the best way of handling the awkward circumstances of having one safety and health law which applies to all construction employers and another which applies to them where Federal and federally assisted construction contracts are involved.

EFFECT ON OTHER LAWS

Both the substitute and H.R. 16785 provide that the act shall not apply where another Federal agency is exercising authority to prescribe or enforce occupational safety and health standards. Since Congress has provided for State agencies to exercise authority under them where Federal and federally assisted construction contracts are included those State agencies under this provision.

While this section does not foreclose the authority of the Secretary of Labor in instances where another agency or department has statutory authority in the area of occupational safety and health, but has taken no action, it is anticipated that these instances will be extremely rare. It is intended that the Secretary of Labor will not exercise his authority where another agency with appropriate jurisdiction has taken steps to exercise its authority, even though the action might be at the formative stage of regulations or enforcement.

STATE PROGRAMS

Section 21(g) of the substitute authorizes the Secretary to make grants to States having plans which he has approved in order to assist these States in administering and enforcing their programs. The Federal grant authorized here may be up to 50 percent of a State's total costs. The section provides that any variation in the percentage of costs granted to different States shall be determined on the basis of objective criteria. One positive consideration in determining the amount of a grant should be the effort expended by a particular State in the field of employee safety and health prior to its application for a grant. It is intended that States which take the lead in this area and develop effective programs should receive special consideration in the making of Federal grants.

The substitute would not require a State to adopt any particular standard setting and enforcement procedures in order for its plan to be approved by the Secretary. It is only necessary that the State comply with the criteria set forth in section 18(c) of the substitute. Central to these requirements is the provision of section 18(c)(2) which requires that a plan provide for the development and enforcement of standards which are at least as effective as the Federal standards to be promulgated under the act. A State plan must also designate an agency or agencies which will administer the plan, and assure the legal authority, personnel, and funds necessary for it to carry out its administrative and enforcement activities.

EFFECT ON BUILDING CODES

The substitute will not supplant local building codes. It is conceivable that there will be some overlap between certain standards developed under the bill and local regulations which cover the same substantive areas. For example, a standard might be promulgated by the Federal Occupational Safety and Health Board dealing with the necessity for, or placement of, fire exits in a plant. A local building code might also have regulations in this area. Whether the Federal standard would apply would depend upon the existence and operation of an applicable State plan. In addition, in the promulgation of such a Federal standard, it would be appropriate to consult local building codes and building safety officials in an effort to accommodate those codes as far as possible.

As far as requiring major remodeling of buildings, the setting of standards contemplates taking into account "feasibility." Further, the substitute provides for the granting of variances from standards.

I cannot let this opportunity pass without paying tribute to the distinguished gentleman from Florida, Mr. Sikes. He recognizes the need for bipartisan support for an effective safety and health act. His help in bringing this substitute to the floor today has been invaluable. I cannot pay him adequate tribute for his guidance, wise counsel and support. This body owes a great deal. He has my sincere respect and thanks.

This substitute has the support of Democrats and Republicans, business and labor groups, and the Nixon administration. It is strong. It is fair. It is workable. It would provide effective protection for America's working men and women. It offers the best method of bringing all the resources of the Federal Government to bear in bringing an end to job related injury, death, and disease.

When we return to the Whole House I would like to include at this point a letter from Labor Secretary Hodgson in support of this substitute.

Mr. Chairman, the President summed up my feelings on the consequences of our deliberations here today when he said:

More is at stake than the reputation of one political party or another for legislative wisdom or political courage. What is at stake is the good reputation of American Government at a time when the charge that our system cannot work is hurled with fury and anger by men whose greatest fear is that it will.

Mr. ANDERSON of Illinois. Mr. Chairman, will the gentleman yield?

Mr. SCHERER of Wisconsin. I will be delighted to yield to the distinguished gentleman from Illinois.

Mr. ANDERSON of Illinois. I should like to congratulate the gentleman from Wisconsin for an extremely able presentation and a very loud explanation of the need for this legislation. Also, he has stated the reasons why the substitute he has cosponsored with the gentleman from Florida (Mr. Sikes) is to be preferred over the committee bill.

I do have one question as a result of listening both to the chairman of the committee and also the gentleman from Wisconsin. As I understand it, the focal point of the controversy or at least one of the points of controversy in this dispute is over the five-man board that would be appointed by the President to set standards.

The argument has been made here today and elsewhere that this would inevitably lead to the creation of a board that would be dominated by promanagement interests to the detriment of labor. On the other hand, if I have understood the gentleman from Kentucky correctly and the amendments that will be tendered to the so-called Daniels bill, they will include the idea that you will have a three-man presidentially appointed enforcement board. Is that correct?

Mr. STEIGER of Wisconsin. As I review the letter that was written to all of us, I find nowhere in here on the five amendments to be offered to the Daniels bill an amendment similar to that adopted in the Senate as offered by Senator Javits which creates a commission to handle the enforcement. So I am assuming that they made no change in the centralization of functions of the promulgation of standards, inspections, and investigations, and enforcement in the hands of the Secretary of Labor.

Mr. ANDERSON of Illinois. I thank the gentleman for clearing up that point, because there was something the gentleman from Kentucky said which to me indicated that there might be a willingness to go along with the idea of a three-man board for enforcement purposes. If that was indeed the position they are going to take, I would feel there would be less injury to have a board for enforcement than to have a board for the setting of standards.

Mr. STEIGER of Wisconsin. The point made by the gentleman from Illinois is correct. The structure of the substitute is based on the concept of the complete separation of the functions, because I do not believe in an area of this kind that you want to attempt to put into one hand all of that power. Therefore the substitute provides for that complete separation, and the Daniels bill, even with the amendments, does not provide for any separation of that which now in the Daniels bill rests with the Secretary of Labor.

Mr. ANDERSON of Illinois. If the gentleman will yield further, I agree with him and commend him on the work that he has done to present to us today an acceptable substitute.

Mr. STEIGER of Wisconsin. I thank the gentleman for his comments and yield back the balance of my time and include the letter from the Secretary of Labor referred to earlier in my remarks:

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 23, 1970.

HON. WILLIAM A. STEIGER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN STEIGER: I am writing you concerning H.R. 19200, an occupational safety and health bill which was introduced by Congressman Steiger and Sikes, September 15, 1970. As you know, the President sent a special message to Congress in August of 1969 expressing his strong support for comprehensive occupational safety and health legislation. With the message the President transmitted a proposed occupational safety and health draft bill which was introduced by Congressman Ayres as H.R. 13733. Since the introduction of this legislation the President has mentioned on four separate occasions in messages to the Congress the need for enactment of a comprehensive occupational safety and health act.

I wish to indicate the administration's support for H.R. 19200. It is very similar to a bill which Congressman Hathaway introduced by motion in the House Committee on Education and Labor. As such it represents a compromise between the

administration's original bill and the bill which the committee reported. I was personally involved in the discussions with Congressmen and their representatives from both parties which lead to this compromise and I firmly believe that H.R. 19200 is a strong, comprehensive measure which include fair effective procedures for promulgating and enforcing occupational safety and health standards.

My endorsement of H.R. 19200 is in the spirit of compromise and a desire to see effective occupational safety and health legislation enacted this year.

Sincerely,

J. D. HODGSON,
Under Secretary of Labor.

MR. PERKINS. MR. Chairman, I yield such time as he may consume to one of the distinguished sponsors of the bill, the gentleman from New Jersey (Mr. Daniels).

(Mr. DANIELS of New Jersey asked and was given permission to revise and extend his remarks.)

MR. COHILLAN. MR. Chairman, will the gentleman yield?

MR. DANIELS of New Jersey. I shall be happy to yield to the distinguished gentleman from California.

(MR. COHILLAN asked and was given permission to revise and extend his remarks.)

MR. COHILLAN. MR. Chairman, I rise in strong support of H.R. 16735, the Occupational Health and Safety Act of 1970. This legislation would authorize the Secretary of Labor to promulgate, monitor, and enforce Federal job health and safety standards for workers.

MR. Chairman, there is a strong need for strict Federal regulations regarding the health and safety of workers. Present efforts in this area, whether they be State or private, are inadequate for in the past 10 years the total number of deaths and disabling injuries has increased dramatically and this upward trend shows no sign of change. Statistics from the Department of Labor show that 55 working men and women are killed on the job each day—that is 14,500 are killed annually while 2.5 million Americans are disabled each year on the job and another 7 million are injured.

A recent study made for the Department of Labor, by Mr. Jerome Gordon, shows even more frightening figures. This unpublished report concludes that as many as 25 million serious injuries and deaths on the job are not counted each year by the Federal Government. Inadequate standards for counting injuries and faulty reporting seems to indicate that the injury rate for workers is 10 times higher than official figures show.

While human death and suffering can never be measured in dollar figures, there is an economic loss that must be considered with this issue. It has been estimated that workers injured or killed lose an estimated \$1.5 billion annually in wages and that the total economic loss to the Nation's economy is in excess of \$8 billion a year.

Under this bill, the safety and health of workers will be the Secretary of Labor's primary responsibility. I am pleased to see that this bill places the authority for the establishment, enforcement, and development of job health and safety standards in one appointee whose primary obligation is to protect the legitimate interests of the workers and to enforce public policy in these areas as given to him by the Congress and the President. I am opposed to the idea of a board or a commission having such authority as it appears and has been proven that boards and commissions have been used in the past as

a common technique to avoid making decisions. A board whose members are appointed to a fixed term or at the pleasure of the President could not be held accountable to any one for reasonable and consistent establishment of standards.

Under the provisions of this bill, full authority is given to the Secretary of Labor to issue occupational health and safety standards, with recourse to Federal courts to enforce such standards. Provision has been made for penalties against violations and the Secretary of Labor has the authority to shut down plants or curb operations where a Federal inspector finds an "imminent danger" of loss or injury for workers. Also, I am pleased to see that this legislation contains authority for the Secretary of Health, Education, and Welfare to authorize research into job health and safety problems, establish training and employee education programs, and provide for accurate reporting of job accident and disease statistics. This bill also sets up an ad hoc advisory committee to assist in the developments of standards and a 20-member national advisory committee.

Mr. Chairman, a comprehensive occupational safety and health program must be based on the individual rights of the worker. It must permit the worker to leave his post whenever and wherever conditions exist that endanger his health or safety. The worker must be guaranteed procedural safeguards in order to take corrective action in removing such dangers. Therefore, passage of this measure before this Chamber today is vital and necessary as all of these aspects of a comprehensive safety and health program as provided for in H.R. 16735.

It is time to act on this issue now. It is time for the Congress to pass strict legislation that will provide for the well-being of millions of Americans. We cannot tolerate conditions that take the lives of thousands of workers annually; we cannot tolerate dangerous working conditions that result in disabled workers.

Mr. Chairman, I urge my colleagues to adopt the Occupational Health and Safety Act of 1970 today in an effort to provide for better working conditions for all Americans.

Mr. DANIELS of New Jersey. Mr. Chairman, America's 80 million working people spend an average of 40 hours a week in some of the most polluted, physically hazardous, and physically damaging environments found anywhere. Eighty percent of these citizens work in places where no type of health service is provided, and the protection given the remaining 20 percent varies from excellent to minimal.

From across the country, the Select Subcommittee on Labor has received devastating accounts from individual working men and women of the appalling results from exposure to a contaminated workplace.

In the manufacture of matches in Louisiana, workers—most of them women—have reported numerous nervous breakdowns, becoming uncoordinated and having accidents.

From New Mexico, workers list 10 deaths in the grants area from lung cancer from radiation.

Oil refinery employees in Tennessee count several cases of cancer in one small plant, two deaths from burning and one loss of life due to hydrogen sulfide.

In pesticide production plants, workers are dying and others are disabled due to lung conditions, primarily emphysema caused by chemical fumes.

From Michigan, plant workers report dust from cyanide in great quantities, with resulting lung ailments and death. Sulfuric acid spray is present in the atmosphere in such quantities that it eats paint off the cars in the parking lot in addition to causing harm to the employees.

Exposure to acrylamide in a New Jersey plant has resulted in worker paralysis and blinding.

Investigations of conditions in the textile mills reveals that among carders and spinners 29 percent had byssinosis, a progressive lung disease causing total disablement.

Among deaths of asbestos workers, studies have revealed that 10 percent were dying of asbestosis, a disease causing inability to breathe; over 20 percent were dying of lung cancer; 10 percent of cancer of the digestive tract; 10 percent of nasal mesothelioma—also a cancer—and another 10 percent of miscellaneous cancers.

Yet despite these tragic accounts, Congress and the State legislatures have passed safety and health legislation in a piecemeal fashion, usually in response to a disaster of major proportions in a particularly hazardous industry. Last year, Congress passed the landmark Federal Coal Mine Health and Safety Act. The main impetus for Federal action in this field came, unfortunately, because the lives of 78 West Virginia coal miners had been snuffed out one fatal day in 1968.

Testimony at that time concerning the provision in the Coal Mine Safety Act for compensation for black lung disease revealed that over 100,000 other men were slowly losing their battle for life as a result of exposure to minute airborne particles of coal dust. Their silent suffering does not make headlines. For every one of those afflicted miners, there are millions of other men and women in our workforce whose lives are daily being placed in jeopardy from chemicals, insecticides and pesticides, asbestos fibers, cotton fibers, inplant pollution, defective equipment, and faulty or nonexistent safety devices. We do not read about these workers in the newspapers; yet it is a fact of the modern industrial process—whether in our factories or on our farms—that our workers find their lives endangered while earning a livelihood.

Mr. Chairman, I am not overdramatizing. I am merely reporting to the Members of the House of Representatives the results of 15 days of public hearings in the 91st Congress and 11 days in the 90th Congress; the results of a study by Jerome B. Gordon, formerly of Delphi Systems & Research Corp., for the Department of Labor; and reports from labor, environmentalists, health experts, and interested citizens concerned about this problem.

I do not want to single out one particular industry as being extremely hazardous, then this body could not determine standards for each individual industry or occupation in this country. I believe, rather, that it is the proper duty of Congress to give national leadership in a campaign to end the carnage in America's workplaces. Today we have a historic opportunity to pass this Nation's first broad, comprehensive, and fair occupational safety and health bill, H.R. 16783. The Senate passed job safety legislation last week.

I can report to my colleagues that every witness appearing before the Select Subcommittee on Labor in the 91st Congress said there was need for Federal safety and health legislation. Collected in the three volumes of testimony compiling 2,584 pages from the 90th and 91st Congresses are the gruesome statistics and stories of occupational deaths and diseases.

It is a shameful fact that 2.2 million workers are maimed, disabled, or otherwise injured annually on the job. And another 14,500 die through job-related accidents and illnesses. Moreover, over 255 million man-days of work are lost yearly through job disability. It is estimated that the annual loss to the gross national product because of industrial accidents totals \$8 billion. Even more important than these figures is the tragic effect on the lives of the families which have endured these unfortunate accidents. In only 4 years' time, as many people die because of their employment as have been killed in almost a decade of American involvement in Vietnam.

National attention quite properly has been focused recently on environmental problems—the pollution of air and water and the destruction of other natural resources. However, this concern with the “environmental crisis” fails to give sufficient recognition to the pertinent question of occupational safety and health. Our environment consists not solely of the air we breathe traveling to and from work. It is also the air we breathe at work 8 or more hours daily.

This on-the-job pollution crisis is one of the most vital issues in the whole environmental question, for it is from the workplace that much of the pollution problem arises. To pass legislation dealing with dirty air spewing forth from smokestacks without simultaneously seeking solutions to the contaminated environment inside the factory makes little sense.

The statistics and records of occupational disease and death may not tell the whole story. According to the Gordon study for the Labor Department, the report figures may be undercounted by as much as tenfold, meaning that as many as 25 million men and women suffer injury annually from job-related accidents or illnesses.

It was reported to the subcommittee that safety records may also be misleadingly low because they refer only to violent physical injury causing immediate, visible physical harm. Records do not exist, on any meaningful basis, regarding the creeping death and disability caused by plant environmental hazards to the health. The occasional man who is crushed by heavy equipment becomes a statistic; the man who withers away with cancer, emphysema, or brain damage does not.

The subcommittee further learned of the inadequacies of State laws. Particularly regarding the insidious “silent” killers such as toxic fumes, bases, acids, and chemicals. When, at this point in history, workers are much more endangered by environmental conditions which threaten their health than from safety hazards resulting in violent physical injury, it became clear to the subcommittee that State laws are woefully lacking in protection for employees so exposed.

Testimony during the 90th Congress revealed that a chemical, betanaphthylamine, which has no safe limit of exposure because it causes bladder cancer, was banned from the State of Pennsylvania. The plant using the hazardous substance then moved to Georgia and continued its operations.

In the 91st Congress, the Chemical Workers Local 8-496 from Newark, N.J., my own State, testified that its members were "having trouble with beta naphthylamine." Obviously, New Jersey statutes still permit the use of this known carcinogen.

Clearly, it is the workers and their families who are most directly affected by unsafe and harmful working conditions. Yet, leading environmentalists, health professionals, doctors, and medical students have joined with the workers in supporting passage of H.R. 16785.

In a letter to all Members of Congress these concerned citizens, including Dr. Paul Cornely, president, American Public Health Association; Prof. Rene Dubos of Rockefeller University; Barry Commoner of Washington University; Paul Ehrlich of Stanford University; and Ralph Nader of the Center for the Study of Responsive Law, stated:

Although the burden of hazardous work places falls most heavily upon the blue-collar workers, the problem of occupational safety and health affects all Americans. The in-plant environment is merely a concentrated microcosm of the outside environment. The environmental health hazards that workers face affect the entire population to a lesser degree. If industrial chemicals and processes were properly researched and monitored before they were put into use, the entire population would be spared.

The need for legislation is clear. The only question is what is the best legislation to deal with this problem to us all. The bill has gone through many modifications during the committee's consideration, and we can now also profit from the deliberations in the other body which has just passed an occupational safety and health bill. We are not too proud to improve our bill; and, in order to make every concession to alleviate fears that have been expressed, we will propose modifications to the committee bill, that while not interfering with its effectiveness, will reduce areas of concern that have been expressed.

As modified by our amendments, the bill provides that employers must comply with occupational safety and health standards prescribed by the Secretary of Labor. These standards are of two types. First, there will be interim standards consisting of Federal safety standards already in effect, consensus standards, or standards of other nationally recognized standards setting groups. There is an expedited rulemaking procedure for putting these interim standards into effect pending the development of permanent safety standards.

Permanent safety standards will be prescribed only after public hearings and after receiving advice from experts in the field. The standards-setting procedures have been carefully designed by the committee to be both efficacious and to protect all legitimate interests. The bill also provides special procedures for dealing with emergencies and for granting variances to employers who can show that the safety of their employees will not be affected by a departure from the national standard.

These standards will also provide warning to employees about hazardous situations to which they are exposed as well as the use of appropriate protective equipment. Further, where it is necessary to protect employees, these standards will provide for measuring employee exposure to dangers. These provisions, similar to those in the

Steiger substitute, have been added to the committee bill to take the place of the provisions regarding monitoring which caused concern that they might impose excessive costs on the employer. In addition, the provision in the committee bill which has been frequently misinterpreted as a "strike with pay" provision has also been deleted.

We must recognize that there will always be dangerous situations not covered by specific safety standards and there has been much controversy as to the proper obligations of the employer in these situations. Nearly all State and Federal safety laws provide a so-called general duty obligating the employer to furnish a safe and healthful place of employment. Fears that this obligation may be an undue burden on employers have been widely expressed. I believe and the committee believes that these fears are unwarranted, but in the spirit of seeking workable and acceptable solutions that has marked our efforts in this field, we have modified the duty to require only that the place of employment be freed from "recognized" hazards. Furthermore, there are no penalties for violations of this duty. The only penalty is if an employer fails to correct a recognized hazard within the time specified in a citation.

The Secretary is also empowered to enter the premises of an employer "at reasonable times" to conduct inspections and investigations and issue citations where there is a violation of the act. The philosophy underlying H.R. 16785 is not based on the assumption that American industry can be made safe and healthful simply by enacting a Federal law which emphasizes penalties. So, if an employer has violated an occupational safety and health standard, and no serious danger will result, a civil or criminal penalty will not be levied unless the violation is willful. The Secretary enforces his orders in the Federal district court after a hearing under the Administrative Procedure Act and a full opportunity is provided for judicial review.

The procedures to counteract imminent dangers have been among the bill's most controversial features. In the same spirit of seeking acceptable solutions, we have modified the committee bill and now rely exclusively on judicial remedies to counteract these imminent dangers. Our provision is now identical to that in the Steiger substitute. As a matter of legislative history, I want to make clear our intention that the Secretary resort to the courts with utmost speed when he encounters these imminent danger situations. Our provision reflects our trust that the courts will be able to respond with the speed that is needed.

In order to assist the Secretary of Labor and his advisory committees in formulating standards, H.R. 16785 authorizes the Secretary of Health, Education, and Welfare to conduct research and develop criteria, particularly concerning the new problems created by technology, as well as motivational and behavioral factors involved in on-the-job safety.

H.R. 16785 does not repeal any other Federal laws prescribing safety or health requirements. A provision of the act also specifically exempts employees over whom a Federal agency exercises statutory authority to prescribe safety and health regulations. Our modifica-

tion, however, follows the substitute bill in providing that the construction industry will be subject to the Construction Safety Act as well as this bill.

A State could at any time submit a plan to the Secretary to reestablish its jurisdiction over an area covered by a Federal standard. The Secretary must approve the State plan if it meets specific requirements. As an encouragement for State action, the bill gives Federal financial support to assist States in assuming their own programs for worker safety. Planning grants with up to 90 percent Federal participation and program grants with up to 50 percent Federal participation are provided.

Adequate information is the precondition for responsive administration of practically all sections of this bill. The reporting section assures completeness of data and directs the Secretary of Labor to cooperate with the Secretary of Health, Education, and Welfare in developing regulations which implement this goal. At the same time, employers are assured that they will not be subject to duplicative recordkeeping.

The House of Representatives cannot delay or dilute its action on occupational safety and health legislation. Every day we postpone passage means 55 more American workers will die; 8,500 will be disabled, and 27,200 will be injured. Surely this appalling bloodletting in American workplaces must weigh heavily on the conscience of the American people. The House should act now so that this needless loss of life and limb can be effectively reduced.

I shall insert in the Record at this point the text of the amendments, with explanations, that I shall offer to the committee bill so that all Members shall have an opportunity to examine same before voting tomorrow:

AMENDMENT No. 0 TO H.R. 16785 TO BE OFFERED BY MR. DANIELS OF NEW JERSEY

Page 46 line 15 strike out "Nothing" and insert the following "Subject to the provisions of subsection (c), nothing"

Page 46 lines 22 and 23, strike out "Public Law 91-564, act of August 9, 1969 (83 Stat. 98, 40 USC 333)."

Page 47, line 7, after line 7 insert the following:

Not subject to the provisions of subsection (g) of section 107 of the Contract Work Hours Standards Act, nothing in this act shall apply to any employer who is a contractor or subcontractor for construction, alteration, and/or repair of buildings or works, including painting and decorating, in the regular course of his business.

"(1) (1) Amendment (a) of section 107 of the Contract Work Hours Standards Act is amended by inserting (1) after (a) and by adding at the end thereof the following new paragraph:

(b) Each employer (as defined in section 3(4) of the Occupational Safety and Health Act) who is a contractor or subcontractor for construction, alteration, and/or repair of buildings or works, including painting and decorating, in the regular course of his business shall comply with construction safety and health standards promulgated under paragraph (1) of this subsection."

"(2) Section 107 is further amended by adding at the end thereof the following new subsection:

"(c) A construction safety and health standard promulgated under paragraph (1) of subsection (a) shall be considered the supreme of all the provisions of the Occupational Safety and Health Act other than sections 6, 7, and 15 thereof, so as to supersede any safety and health standard promulgated under such act."

AMENDMENT No. 0

CONSTRUCTION INDUSTRY

1. *Explanation:* This amendment makes the standard-setting provisions of the Construction Safety Act, which now applies only to contractors on government and government-assisted work, applicable to the entire construction industry. Enforcement of these standards will be in accordance with the provisions of the general occupational safety and health bill. The provisions for debarment, contract cancellation, et cetera, now applicable to those performing on government work are left unchanged.

2. *Justification:* This Congress enacted the Construction Safety Act just over a year ago and the process of setting standards under that act is underway. As most contractors work on both government and nongovernment work, it makes sense to place all construction work under a single bill.

This approach is similar to the Steiger substitute with regard to the construction industry.

AMENDMENT No. 1 TO H.R. 16785 TO BE OFFERED BY MR. DANIELS OF NEW JERSEY

Page 47, strike out lines 10, 11, and 12, and insert the following:

"(1) shall furnish to each of his employees employment and a place of employment free from recognized hazards so as to provide safe and healthful working conditions, and"

AMENDMENT No. 1

GENERAL DUTY

1. *Explanation:* This amendment deletes the requirement that an employer furnish a "safe and healthful" place of employment and substitutes a more limited requirement that he furnish employment "free from recognized hazards." An amendment which I will offer to section 15(b) changes the penalty for violating this modified General Duty.

2. *Justification:* Although a General Duty is contained in most States and Federal safety laws, fears have been expressed that employers will be harassed because the duty is too vague and undefined. Most safety situations will be covered by standards, but some provisions must be made for the occasional unique situation that does not fall within a standard. We have accepted the limitation of the General Duty to protection against "recognized" hazards to make sure that employers cannot be held responsible for protecting their employees against dangers which are not recognized to be such. By modifying the penalty provision for violation of the General Duty, we have eliminated any possibility that employees could be treated unfairly.

Our modified General Duty does, however, differ in important respects from the General Duty provisions in the Steiger substitute.

The first difference is that my amendment protects against "recognized" hazards while the Steiger substitute only protects against "readily apparent" ones. A recognized hazard is a condition that is known to be hazardous, and is known not necessarily by each and every individual employer but is known taking into account the standard of knowledge in the industry. In other words, whether or not a hazard is "recognized" is a matter for objective determination; it does not depend on whether the particular employer is aware of it.

I am afraid that "readily apparent" as used in the substitute, means apparent without investigation, even though a prudent employer would investigate under the circumstances. A danger, in other words, may be recognized as such in the industry, but may not be apparent to an employer who is ill-informed and does not choose to investigate the danger of the situation. That is not sufficient protection for employees.

AMENDMENT No. 2 TO H.R. 16785 TO BE OFFERED BY MR. DANIELS OF NEW JERSEY

Page 51, after line 16, insert the following:

"(5) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and

procedures of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and controls or administrative procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as shall be necessary for the protection of employees. In addition, where appropriate, and such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the employee, to his physician."

AMENDMENT No. 2

LABELING AND MONITORING AMENDMENT

1. *Explanation:* This amendment provides that safety standards shall include requirements for warning employees about the hazards to which they are exposed by the use of labels or other means. The standards must also prescribe protective equipment and proper emergency treatment. Under appropriate circumstances, the standards must also provide for monitoring employee exposure to assure their proper protection. This description of what must be included in standards is in line of the labeling and monitoring provisions contained in the research provisions of the bill, and when we get to that section I shall offer an amendment to delete those provisions.

2. *Justification:* These new provisions on labeling and monitoring are adopted from the Senate-passed bill and are similar to those contained in the Statute of the State. It seems sensible to include all necessary protections for the employee in the safety standard rather than to have separate and independent provisions on labeling and monitoring in the research part of the statute.

Section 19 of the committee bill had different monitoring requirements depending on whether the substance was subject to a standard issued by the Secretary of Labor, was covered by a form issued by the Secretary of HEW, and whether the employer was or was not in compliance with the standard.

I will offer an amendment to delete those provisions when we get to section 19. Under this amendment and the later amendment for section 19 all the enforcement aspects of monitoring will be covered by the standards and the research aspects only will be covered in the research section. I think the amendment adds to the clarity of the bill.

AMENDMENT No. 3 TO H.R. 16786 TO RE-ORGANIZE BY MR. DANIELS OF NEW JERSEY

Page 58, after line 21, insert the following:

"(c) Any employee or representative of employees who believes that a violation of health standards exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth, with reasonable particularity, the grounds for the notice, and shall be signed by the employee or representative of employees. Upon the receipt of the notice of the person giving such notice, his name, and the name of individual employee referred to therein shall not appear on any record compiled, retained, or made available pursuant to this Act. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall issue a special inspection, or a subpoena, with the purchase of that subpoena in form as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify in writing the employee or representative of the employees of such determination."

AMENDMENT No. 3

REQUEST FOR INSPECTION AMENDMENT

1. *Explanation:* This amendment provides that employees may request an inspection by giving the Secretary written notice of the safety conditions that threaten physical harm or imminent danger. The amendment requires the Sec-

retary to make a special inspection as quickly as possible if he concludes that there are reasonable grounds to believe that such a danger exists.

2. *Justification:* This amendment is a substitute for the provision in section 19 of the committee bill permitting employees to absent themselves from dangerous situations without loss of pay. When we get to Section 19 I will offer an amendment to delete that provision.

The provision on employees not losing pay was so generally misunderstood that we have decided to drop it. We have no provision for payment of employees who want to absent themselves from risk of harm; instead, we have this amendment which enables employees subject to a risk of harm to get the Secretary into the situation quickly. Instead of making provisions for employees when their employer is not providing a safe workplace, we have strengthened the enforcement by this amendment provision to try and minimize the amount that employees will be subject to the risk of harm.

AMENDMENT NO. 4 TO H.R. 16785 TO BE OFFERED BY MR. DANIELS

Beginning with line 19 on page 63, strike out everything down through line 9 on page 65, and insert the following:

"SEC. 12. (a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.

"(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to section 11 of this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

"(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

"(d) If the Secretary unreasonably fails to petition the court for appropriate relief under this section and any employee is injured thereby either physically or financially by reason of such failure on the part of the Secretary, such employee may bring an action against the United States in the Court of Claims in which he may recover the damages he has sustained, including reasonable court costs and attorney's fees.

"(e) In any case where a temporary restraining order is obtained under this section by the Secretary, the court which grants such relief shall set a sum which it deems proper for the payment of such costs, damages, and attorney's fees as may be incurred or suffered by any employer who is found to have been wrongfully restrained or enjoined. In no case shall any employer wrongfully restrained or enjoined be entitled to a recovery for costs, damages, and attorney's fees in excess of the sum set by the court."

AMENDMENT NO. 4

IMMINENT DANGER AMENDMENT

1. *Explanation:* This amendment substitutes the imminent danger provisions of H.R. 19200 for those of the committee bill. The amendment deletes completely the provision for an administrative imminent danger order and relies exclusively on temporary restraining orders and injunctive relief from the district courts. Because the administrative order is deleted, the provision for damage actions when the Secretary arbitrarily issues or refuses to issue an order is also deleted. Instead, there is a provision for employee actions in the court of claims if the Secretary unreasonably fails to petition for judicial relief. Employers are protected by a provision which requires the court to set a sum for the employer's damages if he is wrongfully restrained. The employers' recovery is limited to the amount set by the court.

2. *Justification:* While administrative shutdown provisions are contained in the laws of 36 States and the District of Columbia, business groups have expressed great fears about the potential for abuse. They believe that the power to shut down a plant should not be vested in an inspector. While there is no documenta-

tion for this fear, we recognize that it is very prevalent. The Courts have shown their support to respond quickly in emergency situations, and we believe that the availability of temporary restraining orders will be sufficient to deal with emergency situations. Under the Federal rules of civil procedure, these orders can be used as pawns. If the Secretary uses the authority that he is given efficiently and expeditiously, he should be able to get a court order within a matter of minutes rather than hours.

AMENDMENT No. 5 TO H.R. 16785 TO BE OFFERED BY MR. DANIELS OF NEW JERSEY

Page 67, line 2, after "10.51" insert the following: "for a violation of a regulation prescribed under section 9(e) or a rule or order issued under section 7(a)";

AMENDMENT No. 5

PENALTY PROVISIONS

1. *Explanation:* This amendment deletes any penalty for violating the modified general duty provision. However, it retains a penalty for failure to correct a violation of that duty within the time specified in the citation.

2. *Justification:* The deletion of the penalty is in response to the fear that employers could incur a penalty for violating a vague standard. We have not only made the standard more clear, but have also removed the penalty. Of course if an inspector gives a citation and the employer does not comply with its provisions for correcting the hazard there is no reason not to assess a penalty.

AMENDMENT No. 6 TO H.R. 16785 TO BE OFFERED BY MR. DANIELS OF NEW JERSEY

Beginning with line 11 on page 76, strike out everything down through line 23 on page 78, and insert the following:

(4) The Secretary of Health, Education, and Welfare, in order to develop needed information regarding potentially toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which the Secretary of Health, Education, and Welfare reasonably believes may endanger the health or safety of employees. The Secretary of Health, Education, and Welfare also is authorized to establish such programs of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the susceptibility of employees to such illnesses. Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examinations, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. Upon the request of any employer who is required to measure and record exposure of employees to substances or physical agents as provided under this subsection, the Secretary of Health, Education, and Welfare shall furnish the financial or other assistance to such employer for the purpose of defraying his additional expense incurred by him in carrying out the measuring and recording as provided in this subsection.

AMENDMENT No. 6

RESEARCH

1. *Explanation:* This amendment makes the conforming deletions as required by the previously adopted amendments on "Labeling and Monitoring" and "Request for Information." In addition, it authorizes the Secretary of HEW to prescribe regulations requiring employers to monitor and make reports on employee exposure to potentially hazardous substances. This authority is a purely research authority and the amendment therefore provides that the Secretary of HEW may require for financial or other assistance to employers who incur additional expense in carrying out this research function.

2. *Justification:* Under the committee bill the Secretary of HEW was required to make a biologic monitoring of substances on the request of employers or employees. This was having administrative difficulties, both because he might have been faced with some cases and because he might have had to use limited resources on unimportant priority items.

The amendment gives the Secretary a more flexible research authority and makes plain that the Government had not the employer would bear the cost of research monitoring.

MR. RANDALL. Mr. Chairman, will the gentleman yield?

MR. DANIELS of New Jersey. I am happy to yield to the gentleman from Missouri.

MR. RANDALL. In our mail on this bill the most frequent objection, voiced again and again was against the provision which would permit the Secretary of Labor to close down a business without a hearing of any kind or without a court order. My reply to all of those was that anyone and everyone always has resort to the courts, and that the doors of the courthouse would never be closed to any who had a grievance.

Now, as I understand it, the gentleman is proposing to offer an amendment to the end that anything in the bill which would seem to indicate there would be no judicial remedy, will be deleted.

MR. DANIELS of New Jersey. In response to the gentleman, I will say that I propose to offer an amendment to the imminent danger provisions to which the gentleman, I believe, refers, where there is a high probability of loss of life or limb to workers in that plant. I will offer an amendment which will deny to the inspector the right to close down the plant for 5 days, as the language of the bill now stands, and propose under the amendment that the Secretary of Labor shall apply instead for a judicial remedy.

MR. RANDALL. Mr. Chairman, I thank the gentleman from New Jersey.

(Mr. RANDALL asked and was given permission to revise and extend his remarks.)

I might add that in my opinion the Members of the House are indebted to our colleague who serves as the chairman of the Select Subcommittee on Labor as a member of the House Committee on Education and Labor.

I was grateful for the receipt of his letter in this morning's mail in which he pointed out that he would offer amendments to modify the committee bill, H.R. 16785, in at least five different respects. His letter pointed out that he would, at the appropriate time, propose the following amendments:

First. The "general duty" will be modified to require only that employers provide employment "free from recognized hazards" and there will be no penalty for violation of duty.

Second. The provision authorizing the Secretary to order close-downs without a court order in imminent danger situations will be deleted and exclusive reliance placed on judicial remedies.

Third. The provision that has been attacked as giving employee the right to "strike with pay" will be deleted.

Fourth. The monitoring provisions will be revised to eliminate fears of excess burdens on employers.

Fifth. The Construction Safety Act will be amended—as in H.R. 9200—to include all contractors instead of just those performing Government work. It is my appraisal of the situation that just about everyone of us is in favor of the occupational safety and the protection of our workers from hazards to their lives and health at the place where they work. There have been some fears expressed concerning the committee bill. There have been some rather emotional expressions included in the mail which our office has received. If I had to pinpoint the one fear expressed most frequently, it is "imminent danger situation." The provisions of the committee bill would seem to permit the Secretary to order a plant to be closed down without a court order.

In response to the mail which I have received expressing this fear that a plant could be closed down, I pointed out repeatedly that due process could never be denied an employer and his plant closed if such an employer did not agree to the closing. Even as reported from the full committee it was my impression that an employer could say no to an inspector and the inspector would then have to pursue court proceedings against the employer.

Accordingly, whether the forthcoming amendment requires inspectors to resort to judicial remedies was needed or not it is most encouraging to see that such an amendment will be offered if for no other reason than to put to rest or eliminate any lingering fears that an employer would have to stand by and witness his plant closed down for 5 days which would seem to be a denial of due process of law.

Once again, let me say all of us are indebted to the gentleman from New Jersey (Mr. Daniels) for his proposed five amendments. The adoption of these amendments will constitute a forthright rebuttal that there was any intention to make this a punitive bill. I am sure every Member, whether he is for the committee bill or for the substitute which may later be proposed, wants a strong bill and an effective bill. None of us want a punitive bill. The amendments of the gentleman from New Jersey will provide protection for our workers without punishing the employers.

MR. HATHAWAY. Mr. Chairman, will the gentleman yield?

MR. DANIELS of New Jersey. I yield to the gentleman from Maine.

MR. HATHAWAY. Mr. Chairman, to answer further the question of the gentleman from Missouri, may I reiterate the remarks I made when the gentleman from Wisconsin yielded to me, that under the Daniels bill as well as under the Steiger bill, the inspector really does not have authority to close down the plant if the employer does not wish to do so. If the inspector says, "You will close down such and such a location," the employer may say no to the inspector, and the inspector then has to take the employer to court.

So really we do not need the amendment the gentleman from New Jersey is going to offer later on.

MR. DANIELS of New Jersey. Mr. Chairman, I may say to the gentleman from Maine that so many fears have been expressed about that particular provision and so much emotion has been expressed by certain businessmen whenever I have come in contact with them, not only in my own State, but elsewhere, that it is the object of my amendment to eliminate those fears, and to satisfy them that we do not want a punitive bill. I believe that the committee bill is a strong bill, but it is a fair and reasonable bill, and it will be an effective bill if properly administered by the Secretary of Labor.

THE CHAIRMAN. The gentleman from New Jersey consumed 21 minutes.

MR. SCHERER of Wisconsin. Mr. Chairman, I yield such time as he may consume to the gentleman from Iowa (Mr. Scherle).

(Mr. Scherle asked and was given permission to revise and extend his remarks.)

MR. SCHERER. Mr. Chairman, if I may have the attention of my chairman of the Committee on Education and Labor, I might pose this question to him. We have worked on this bill for a long, long time. Why suddenly today are we told that this bill is going to be amended?

Mr. PERKINS. Mr. Chairman, let me say to my distinguished colleague, the gentleman from Iowa, that the subcommittee has worked on it for a long time, but I had the chance to sit in with the gentleman from New Jersey only last week.

Mr. SCHERLE. If I may interrupt my chairman, I am the ranking minority member on the subcommittee, so I am well aware of the work that went into this bill.

Mr. PERKINS. Mr. Chairman, I am sure the gentleman from Iowa is not objecting to these amendments. Is he?

Mr. SCHERLE. The only objection I have is, why all of a sudden does this come up? If these amendments were so good, since we have tried to put the bill in proper form, where have you been with all these amendments for the last 7 or 8 months? Why are we suddenly saddled with the idea that we are supposed to get amendments tomorrow? They have never been in the committee. They have never been worked on. We have got a good substitute.

Mr. DANIELS of New Jersey. Mr. Chairman, will the gentleman yield?

Mr. SCHERLE. I yield to the gentleman from New Jersey.

Mr. DANIELS of New Jersey. It is a question of fears, very frankly, and a question of many misstatements or erroneous statements disseminated throughout the length and breadth of this land, so I decided to amend the bill because I am sincerely and honestly and conscientiously anxious to do something about this problem. I have pointed out the dangers involved.

If we are sincere on both sides of the aisle in wanting an occupational health and safety bill, I am proposing these amendments because I want a bill passed. It is as plain and simple as that.

Mr. SCHERLE. I thank the chairman of the subcommittee for his comments. However, we have worked together for many hours on this bill, and there has never been a subject between us as to which there was not extreme sincerity. We all want the type of bill which will be on behalf of the workingman and also of the employer. One of the things we must remember is that when we cease to have employers we will cease to have employees.

We are trying to make a constructive piece of legislation out of this, and we have worked long and hard, as was mentioned before. If we were sincere in our efforts, these amendments which are talked about now should have been proposed weeks ago, or within the last month. All of sudden now, because you know the substitute is going to pass, you are running panicky, and you press the panic button, and you are fearful that the right bill will pass.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. SCHERLE. I yield to my colleague from Wisconsin.

Mr. STEIGER of Wisconsin. I appreciate very much the gentleman's comments. I might say that they will have that opportunity.

Mr. SCHERLE. I am well aware of it.

Mr. STEIGER of Wisconsin. The substitute bill contains not only the five amendments that are going to be proposed to modify the new Daniels bill as contrasted with the old Daniels bill—one we really have not seen before—but it also, of course, provides for an even greater degree of equity and effectiveness in its approach.

I must say I am pleased that the gentleman from New Jersey is coming along in his efforts to get us closer to the adoption of the substitute.

MR. DANIELS of New Jersey. Mr. Chairman, will the gentleman yield?

MR. SCHERLE. I am sorry, but I have a statement to make here now.

MR. DANIELS of New Jersey. I would like to correct a statement by my colleague.

MR. SCHERLE. Mr. Chairman, I rise in support of H.R. 19200, the substitute occupational safety and health bill. The main difference between the committee bill and the substitute bill lies not in the purpose of these measures but in the manner of achieving the purpose.

The true goal of any occupational safety and health legislation can be simply stated. It is to foster improved standards of safety and health for workers, and to do it in a way that is both reasonable and fair. I suppose, Mr. Chairman, that if I were to describe in one word my objection to the committee bill, the one word I would use is "unfair."

If legislation in this area is to be genuinely effective in promoting safe and healthful working conditions, it must be rooted in the clear recognition that its success will ultimately depend upon the cooperation and good will of employers regarding the complex problems of job safety and health. I wish to make it clear, Mr. Chairman, that I am not advocating any sort of voluntarism. But I do believe that all the good that could be brought about under the bill's education, research, and enforcement provisions should not be rendered ineffective by understandable resistance to its unfair regulatory features.

Our greatest concern in this legislation should be protection of the safety and health of workers which can be achieved only under fair procedures. Unfair methods will only serve to alienate employers from officials—both State and Federal—who ought to be guiding employers toward compliance.

Unfortunately, the committee bill does not provide fair procedures. Instead, it follows the oversimplified approach of placing all functions in the Secretary of Labor. Under the committee bill, the Secretary sets the standards, conducts inspections and prosecutes violations before Labor Department hearing examiners. Under the committee bill, the Secretary would also be the one to issue citations and corrective orders, and to assess the monetary penalties.

In contrast, Mr. Chairman, the substitute bill would provide fair and equitable procedures for achieving its purpose. The substitute bill references the responsibility for job safety and health, by distributing functions. In an effort to achieve the fairest possible procedures for administering and enforcing the new law, the substitute bill would establish an independent Occupational Safety and Health Board whose five members would be appointed by the President. The sole function of the Board would be to issue occupational safety and health standards.

Under the substitute bill, the Secretary of Labor would be authorized to make inspections in much the same way as he does under the committee bill. But under the substitute bill the Secretary would not make the case and pass judgment on the offender. Instead, the substitute measure would set up an independent presidentially appointed Occupational Safety and Health Appeals Commission whose function

would be to conduct hearings on alleged violations discovered by the Secretary and the Commission would issue any necessary corrective orders, as well as assess civil penalties.

The distribution of functions provided by the substitute bill would provide the fairer and more equitable method of providing safe and healthful working conditions in American industry. Therefore, Mr. Chairman, in the strongest terms possible, I urge its enactment.

(Mr. SCHERLE asked and was given permission to revise and extend his remarks.)

Mr. STEIGER of Wisconsin. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania (Mr. Eshleman).

(Mr. ESHLEMAN asked and was given permission to revise and extend his remarks.)

Mr. ESHLEMAN. Mr. Chairman, very briefly and very concisely I should like to enumerate what I believe is wrong with this piece of legislation, which I guess we now label as the old Daniels bill.

First. I am thoroughly convinced it places too much power in the hands of the Secretary of Labor—whether he is a Democrat or a Republican. I would rather see a Presidential board or commission created to handle the functions of this statute.

Second. As written, this bill sets up "one-man justice." The Secretary of Labor is a combination rulesmaker, policeman, judge, and jury, thus going against our long established doctrine of separation of powers.

Third. With this bill we would create dual coverage. Employers would be subject to not only this new piece of legislation but also to other Federal safety laws which would result in employers being caught between conflicting rules and regulations.

Fourth. Some of the language in this bill is too vague in nature. For example: an employer must provide a safe place of employment with no criteria as to what constitutes a safe place. Therefore an employer could be subject to the judgment of an inspector. This certainly is an unhealthy situation.

Finally, I object to the "on the spot" plant closure which enables inspectors to close plants up to 5 days if in their judgment there be imminent danger. No effective check on the inspector nor any objective standards are provided to support the 5-day closing order.

All in all, no one objects to occupational health and safety, however, I object to the vagueness and generalities contained in this bill.

Mr. STEIGER of Wisconsin. Mr. Chairman, I yield 15 minutes to the gentleman from Illinois (Mr. Erlenborn).

(Mr. ERLNBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLNBORN. Mr. Chairman, we are here today to agree, and I think everyone does agree, that occupational health and safety legislation is necessary for the protection of the working men and women in this country. I do not think we will have any debate on that point or any difference of opinion. There is a difference of opinion, obviously, as to which is the best approach to attain this universally desired result.

It is somewhat difficult today, I guess, to debate this question not knowing whether we should direct our remarks to the bill as introduced or as the subcommittee reported it or as the full committee

reported it or as it might be amended by the amendments offered by the gentleman from New Jersey. It reminds me of some of the amendments that have been offered from time to time to the OEO legislation. We would hear the question from the other side of the aisle: "Which substitute is it you are talking about?" That is the problem which perhaps faces us here today in having a little difficulty in getting our hands on exactly what version of the bill we ought to address our remarks to. Not having seen until I came to the floor today the proposed amendments that the gentleman from New Jersey apparently intends to offer, I prepared my remarks to the bill as I thought he was going to offer it for our consideration and as it was reported by the full committee.

I think it is deficient in several points. I feel sincerely that the Steiger Sikes substitute will provide better legislation, more properly fashioned to fit the structure that we should have in our executive branch for the administration of this legislation. Actually it will provide more safety and better working conditions for the working men and women as well as more equity for all who might be affected by the act.

Mr. Chairman, I would like to talk about several of the contrasting provisions between the committee bill and the Steiger Sikes substitute and point out why I think the Steiger Sikes substitute is better legislation and is better designed to do the job that we all want to have done and do it as early as possible.

I think the one outstanding difference of opinion has obviously been on the question of the proper method of setting the standards that industry must follow for safe and healthful working conditions. The committee bill would make the Secretary of Labor the legislator, policeman, and prosecutor, the judge and jury. It violates, really, the very basic concepts of good executive branch enforcement. The Steiger-Sikes substitute would separate out the separate functions. It would have a board to establish the standards for occupational health and safety. It would be an independent board appointed by the President. It would have a rather unique committee for the determination of violations on a contest after the citation had been issued. In this way the separate functions of legislative, executive, and judicial would be separated, as they are in our own Federal system and our State systems setting up the three coordinate but equal branches of Government.

I think that basing our structure of this legislation on the traditional separation of these powers is a very wise thing to do. Advisory committees are required in the committee bill in the process of the establishment of standards. They are mandatory. That means there is going to be the element here in an emergency situation that will slow down the standard-making process which in my opinion—and I believe if anyone looks at this legislation they would agree with me—would deny to the working man and woman in an emergency situation the timely establishment of rules and regulations that they need for their safety and their health.

The Steiger Sikes substitute on the other hand makes the use of these advisory committees discretionary in an emergency situation. Emergency standards could be established by the Board where there may be some new manufacturing process, some new toxic substance utilized by industry, and in the opinion of the Board it is to the best

interest of the working men and women to immediately have some interim standards.

Under the Steiger-Sikes substitute this could be done without delay. Then the hearings and the recommendations and the reports of the advisory committees and all of the other time-consuming processes could be gone through thoroughly, but in the interim under the Steiger-Sikes substitute, there would be the rules and regulations for the protection of our working people.

In this way I think it is clear that under the Steiger-Sikes substitute, without giving up due process will be more responsive to the needs of industry.

The committee bill in my opinion will also be slow in establishing the initial standards for industry to follow. I think the procedures will be slow and cumbersome.

The Steiger-Sikes substitute on the other hand will put heavy reliance upon immediately putting into effect consensus standards and Federal standards already applicable and then provide the process for amending those standards and making them, after they come in as interim standards, fully applicable standards after the full hearing process.

Mr. Chairman, several comments have been directed to the general duty provision—and, again, I do not know how this provision might read—when we come to actually voting on the bill. But as it is in the committee bill today it is too vague as to the general duty upon an employer to provide a working place that is safe and healthful. We will have all the process gone through of developing health and safety standards that will be clear for the employer to follow. If he then follows all of these standards and provides a working place that is in full compliance with all the written standards under the committee bill as reported, and an inspector comes into his plant he can say: "Yes, you have complied with everything, but in my opinion it will not provide a safe and healthful working place," and he could issue a citation of some subjective standard that the inspector would apply, one that had never been made known to the employer before the inspector appeared and made the charge.

Obviously, Mr. Chairman, this violates every concept of due process and it makes the standard-setting process a joke and a farce. Unless this is changed, it makes the bill a joke and a farce.

There is a question here that I do not believe has been discussed by the other speakers so far and that is the question of product safety. It is very difficult in an industrial health and safety bill when you are talking about a working place, to separate out the question of product safety as far as this applies to those tools that are utilized in the working place.

In the Steiger-Sikes substitute, section 18(c)(2), there is a provision that is similar or identical to the committee bill in section 17(c)(2), which encourages the States to adopt State plans, and then if the State plan is in conformance with this act or if the standards are at least as high as the standards that are developed under this act, then the State enforcement can be relied upon.

Now, neither of these bills at this point gives the safeguards that we might need in the area of product safety, and I will call this to your attention because I think an amendment may be offered by one of my

colleagues, or by myself, when we get to the amending stage, to remedy this situation.

When I talk about product safety I am talking about those machines that might be manufactured in one State and then sold in interstate commerce in many different States. And if we do have the State plan situation that both of these bills would encourage, we then might find a great diversity of State requirements as to the safety devices on the machinery that is sold in interstate commerce. In the other body the Senator from Ohio (Mr. Saxton) offered an amendment that would remedy this problem, and a similar or identical amendment, I believe, will be offered in the House that would limit the variety of requirements in the State health and safety laws, and the State requirements in their diversity only if the standards that they applied were necessary to provide a greater degree of safety, and not unduly burden interstate commerce. In other words, why should we have a diversity of State requirements for something that is sold in interstate commerce if this is a variation, not in degree of protection, but only in kind? And I would hope that this amendment would receive universal support when it is offered because there will be an undue burden in interstate commerce to those who produce machinery for sale in interstate commerce if we have a great diversity of State requirements that would require in effect that machinery be made specially for each one of the jurisdictions involved.

Mr. HATHAWAY. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNBERG. I yield to the gentleman from Maine.

Mr. HATHAWAY. Mr. Chairman, I just wonder whether the various manufacturers have any difficulty now under existing State requirements?

Mr. ERLÉNBERG. I know why the gentleman asks that question. I had the same reaction. What is there in this bill that makes State requirements any different than today in the diversity of requirements?

To a certain extent there is, I think, a difference made by the two bills in that we are going to encourage the States to get into this area and to submit their plans and adopt health and safety rules. These bills are going to increase what is now a hazard faced by industry—and I am not contending that either of these bills creates a problem, but I believe they may exacerbate the problem and may make it more difficult.

Mr. HATHAWAY. I thank the gentleman.

Mr. ERLÉNBERG. Mr. Chairman, there is another fault that I find with the committee bill. It is presently covered in the SENATOR'S COS. substitute and that is the question of dual coverage. In the committee bill section 4(b) (1), (2), and (3) makes some exceptions, actually in effect repeals certain laws in the field of health and safety, but there are some obvious exceptions in the committee bill to this repeal which leaves a dual coverage in several areas.

Mr. HATHAWAY. I yield to the gentleman from Maine.

I call to mind the coal mine safety bill which is not repealed by this bill. Yes, the rules and regulations under this act, as provided in the committee bill, could and should and would get into the area of coal mines, health, and safety and the metallic and nonmetallic mine safety act and the health and safety act—all these of course would continue to exist and there would be no reason why the health and safety rules promulgated under this act would not also apply to those industries?

Mr. PERKINS. I would say to my distinguished colleague that he is incorrect in that statement because all of these various legislative acts as railway safety and mine safety are specifically exempted under section 22 (b).

Mr. ERLNBORN. I stand corrected.

Mr. Chairman, I was referring to an earlier section on coverage which made certain other exceptions and I did not realize that the committee had separated the exemptions and put them in two different places in the bill.

I think the gentleman is correct.

However, I would like to engage in a colloquy with the gentleman from Kentucky and the gentleman from New Jersey as to the interpretation of this language so there will not be any question as to what it means.

Is it your understanding that present Federal laws providing authority to the executive agency to prescribe health and safety standards that are being exercised will then exempt that industry from the coverage of this act?

Mr. DANIELS of New Jersey. All Federal agencies which are covered by the health and safety laws will be exempt from this act—with just one exception. That is the construction industry. In the construction industry where the Secretary of Labor makes the health and safety rules and regulations, we authorized the Secretary of Labor—we even exempt that area and let the construction safety and health law prevail over all construction except with respect to the penalty. The penalty will be covered by this act.

The CHAIRMAN. The time of the gentleman from Illinois (Mr. Erlenborn) has expired.

Mr. STEIGER of Wisconsin. Mr. Chairman, I yield the gentleman 5 additional minutes.

Mr. ERLNBORN. May I question the chairman of the subcommittee a little more closely on that question because I think the interpretation of this language might be a little bit tricky. I know the reason it is worded this way.

It says that:

Nothing in section 5 of this act shall apply to working conditions of employees with respect to whom any Federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

Now let me pose a couple of alternative questions.

If there is authority under the Federal law, but it has yet been put into effect and it is not being exercised by the executive agency because they have no rules or regulations, then until they do adopt rules and regulations and exercise that authority—then this does apply; is that correct?

Mr. DANIELS of New Jersey. Yes; that would be correct. The gentleman has placed his finger on the key word—and the key word is "exercise."

If an agency fails to pursue the law and exercise the authority that has been given to it, then this law will step in.

Mr. ERLNBORN. In other words, the mere existence of statutory authority does not exempt an industry? It is the exercise of that authority pursuant to the statute that does exempt it; is that correct?

Mr. DANIELS of New Jersey. That is correct.

Mr. ERLINGBORN. I have one other question. This will certainly clear up any difficulty in interpreting this so far as the presently existing statutory authority presently being exercised.

Let me ask this question.

If presently existing statutory authority which is not presently being exercised at the time this bill goes into effect, but is then subsequently exercised; does that then at the time it is exercised exempt an industry?

Mr. DANIELS of New Jersey. At the time that that authority is exercised, that industry will be exempt.

Mr. ERLINGBORN. So this does have a prospective effect. In other words, we are not going to interpret this language only as thought it were being interpreted as to conditions that exist on the day it becomes law, but it will have a prospective effect and the future exercise of authority will then exempt an industry from coverage under this law?

Mr. DANIELS of New Jersey. The gentleman is absolutely correct.

Mr. ERLINGBORN. There is one other situation where there is no present statutory authority, but subsequent to this bill becoming law, statutory authority is enacted, and then the exercise of that authority comes into play: Would that then exempt an industry?

Mr. DANIELS of New Jersey. I think it would depend upon the language employed in that future statute as to what was the intent of Congress. Would it be the intent of Congress that that particular industry should be exempt from the provisions of this bill, or shall we place all safety standards under one authority; namely, as provided in this particular bill?

Mr. ERLINGBORN. I would suspect that if there were separate authority enacted in the future, it would be clearly the intent of Congress that that separate authority would apply rather than the present authority, else legislative enactment would be a waste of time.

Mr. DANIELS of New Jersey. I would say it would depend upon the intent of Congress at that particular moment.

Mr. ERLINGBORN. I thank the gentleman for his help in clarifying the language and making some legislative history on that point. I think it will be helpful in the future in interpreting this language.

Mr. HATHAWAY. Mr. Chairman, will the gentleman yield?

Mr. ERLINGBORN. I yield to the gentleman from Maine.

Mr. HATHAWAY. In the course of the gentleman's remarks, he stated that the general duty provided in the bill makes the bill too broad. I wonder if the gentleman would think that the common law duty of care which each and every one of us has as individuals in the pursuit of our daily lives is too broad, and yet we are able to live with it. I do not see why an employer could not live with the language providing for a general duty of care to keep his plant in a safe and healthful condition.

Mr. ERLINGBORN. I think the gentleman can obviously see the difference between the exercise of some authority in the general duty section of the bill and the common law rule, because if the common rule were the same you would have no need for the authority provided in the act. My problem with this is the question of who makes the determination on the question of general care, and it would appear in the committee bill that the inspector would use his subjective judgment.

In other words, the employer would have no way of knowing ahead

of time what standard of care the particular inspector might impose on him. It would be a subjective judgment that you are calling upon the inspector to make, and one inspector would make a different judgment than another. We are going through a lot of trouble here to have the Secretary or some board establish some rules and regulations so both employer and employee will know what their rights and duties are, and then you negate it by saying there is provision for general care with subjective judgment so that some inspector would be able to override the established rules and regulations. This is the fault that I find.

The question of closing a plant in imminent danger may have become moot or may become moot with the chairman's amendment, or at least the amendment that the gentleman from New Jersey apparently intends to offer. But I think this is one of those items in the bill that duly and properly received a good deal of attention, because under the committee bill—and I think this was the basic difference in philosophy in the drafting of the bill with myself, Mr. Steiger, and Mr. Sikes—under that provision of the bill the inspector was going to be given authority to act on the scene and he was going to have the authority to close down the plant. The alternative we argued for long and hard in the subcommittee was that we should have proper use of the judicial forum in a situation as serious as closing down a man's plant.

There is very little time spent in going into a no-notice injunctive, temporary relief situation in the Federal courts. So the question of time really is not much involved here, and probably in most cases would be no more than a matter of a few hours.

I think the bill will be greatly improved, I hope, by the adoption of the Steiger-Sikes substitute, with the provision for judicial temporary relief in an imminent dangerous situation. The bill would be greatly improved by the addition of this amendment requiring that the inspector of the Secretary go into the Federal district courts and get a temporary injunction, without notice. It could be done rapidly.

And then if the employer wilfully violates that injunction, it is clear that the employer would be subject to a penalty if he is in violation of the order. He would be found in contempt of court if he violates the injunction.

It is also clear the employer immediately has the forum to question the inspector's judgment. The Federal district court would have provided the place where the employer would know he could go for relief, even before the expiration of the temporary injunction. He could go the same day or the next day, and on notice ask for and in the proper case get judicial relief without having his plant closed for 5 days, as would likely be the case if we follow the route of letting the inspector issue the order that would close the plant. In the committee bill the employer would have to seek a forum, would have to establish the forum, would have to establish jurisdiction.

Here all that would have been done, so the employer would know where to go to get his judicial relief and to get it promptly.

I think this is only a question of fairness, and I think the bills, either one of them, would be less than fair to the working man and the employer if we did not have this element of judicial determination in closing a man's plant.

In sum, I think the Steiger-Sikes substitute should be adopted.

Mr. PERKINS. Mr. Chairman, I yield 5 minutes to the gentleman from Maine (Mr. Hathaway).

Mr. HATHAWAY. Mr. Chairman, my purposes in speaking are to cover one point that has not been mentioned too emphatically in the debate and then to ask a few questions.

First of all, I would like to praise the chairmen of the committee and the subcommittee, and as a matter of fact the minority members as well, for their efforts to bring about, in good conscience, an occupational health and safety bill.

Mr. Chairman, I did participate with the minority, the gentleman from Wisconsin (Mr. Steiger), and others, in trying to work out a compromise in the committee. This was for the purpose of compromise only. I support the Daniels bill, although I recognize the substitute bill is a worthwhile effort. I suppose I have to recognize it as a worthwhile effort, because I participated in drafting it myself. I, nevertheless, feel the Daniels bill is preferable.

Mr. Chairman, I want to bring out one point. We do have a provision in the Daniels bill, and the substitute, to allow the States to assume jurisdiction over this matter by simply submitting a State plan to the Secretary of Labor. Hopefully all the States throughout the country will submit their plans immediately upon the enactment of any standards by the standard setting authority provided for in whichever bill may prevail, so that the Federal Government will not have to get into this area, and the States can still continue to exercise jurisdiction in this very important matter.

There were some questions I had that I wanted to pursue with the gentleman from Illinois (Mr. Erlenborn). I was speaking to the gentleman in the course of his remarks about the general duty, trying to show by analogy that we live under general duty ourselves in our daily lives. I do not think the general duty provision is any different. The gentleman said it would be up to an inspector to decide what the general duty was. I suppose that true; it is up to the policeman to decide in the first instance whether or not we have broken a law, too, but we do have resort to the courts, and we would have resort to the courts under this bill. So if an inspector thought an employer had broken the general duty in his work place, the employer could go to court. And hopefully, after a while, a body of law could be formulated so that later cases would have precedents behind them, and we would be able to exercise a fairly uniform body of law throughout the country as to just what general duty is.

Mr. ERLERNORN. Mr. Chairman, will the gentleman yield?

Mr. HATHAWAY. I yield to the gentleman from Illinois.

Mr. ERLERNORN. Mr. Chairman, does the gentleman suggest this general duty law does nothing more than repeat what the general duty law is, and that the employer is under this general duty law anyway?

Is that the point the gentleman makes?

Mr. HATHAWAY. Well, it is tantamount to that, but the point I make is that most employees now are under workman's compensation and cannot avail themselves of any common law rights. It is necessary to reiterate the general duty here in this law in order that we may impose penalties, in order to keep the employer in line.

At the present time they are under that general duty, but most employees have given up their common law rights and cannot sue.

I am not saying this is bad, because it inures to the benefit of employees, because contributory negligence is not a factor in enabling him to get workmen's compensation is he is injured on the job. Workmen's compensation benefits both the employer and the employee.

Mr. ERLNBORN. Mr. Chairman, will the gentleman yield further?

Mr. HATHAWAY. I yield to the gentleman from Illinois.

Mr. ERLNBORN. It was my impression that this provision attempted to go somewhat beyond the common law general duty, to create some new obligation on the employer. If the gentleman's contention is that this obligation is already present, and if we can draw that interpretation, then the provision means nothing because it is already in the common law and we are not changing anything by adding this provision here.

Mr. HATHAWAY. No.

Mr. ERLNBORN. It is a question of remedies now, rather than the duty.

Mr. HATHAWAY. The provision is not meaningless, because under the present law there is no way to take advantage of it because, as mentioned, the employee has given up his common law rights when he goes to work under workmen's compensation. At the present time there are no penalties on an employer who violates his common law duties.

The CHAIRMAN. The time of the gentleman from Maine has expired.

Mr. PERKINS. Mr. Chairman, I yield the gentleman 2 additional minutes, and ask the distinguished gentleman from Maine to yield to me.

Mr. HATHAWAY. I am happy to yield to the chairman of the committee.

Mr. PERKINS. Let me state to the gentleman from Illinois that the question which has been raised may well be moot, assuming that the substitute is voted down and the gentleman from New Jersey (Mr. Daniels) has an opportunity to offer his amendment.

Nevertheless, many of the States in the Union presently under the so-called general duty clause have statutory requirements in addition to the so-called common law duty.

To my way of thinking, the statute just reaffirms the obligation of the common law that if one breaches a duty and damage results he is responsible.

In the State of New York I believe they can go into court and close down a plant. Thirty-six States today have statutes on the general duty section.

So we are just reiterating in the committee bill that presently happens to be in the statutes of many States of this Union, on these enforcement provisions. We have made a proposal that is clearly to the gentleman's liking, assuming that the substitute is defeated.

Mr. ERLNBORN. Mr. Chairman, will the gentleman yield further?

Mr. HATHAWAY. I yield to the gentleman from Illinois.

Mr. ERLNBORN. I would have to make the point that this would also be moot if the Steiger of Wisconsin-Sikes substitute were adopted. The gentleman's scenario for defeating the Steiger of Wisconsin Sikes substitute and adopting the amendment of the gentleman from New Jersey is not necessary. We can do this quicker, easier, neater, and in a much better overall fashion if we adopt the Steiger of Wisconsin-Sikes substitute.

THE CHAIRMAN. The time of the gentleman from Maine has again expired.

MR. PERKINS. Mr. Chairman, I yield the gentleman 1 additional minute.

MR. HATHAWAY. The Steiger of Wisconsin Sikes substitute does have a general duty provision; the substitute provision is confined to apparent hazards that may cause death or serious bodily injury.

MR. ELLENBORN. Mr. Chairman, will the gentleman yield?

MR. HATHAWAY. I yield to the gentleman from Illinois.

MR. ELLENBORN. It is my understanding that the same provision is to be offered by the gentleman from New Jersey, either identical to this or quite similar.

MR. HATHAWAY. It is similar to that, but it takes away the penalty section which the Steiger of Wisconsin Sikes substitute has. For that reason I am not going to support that amendment of the gentleman from New Jersey.

MR. ELLENBORN. Is it safe to assume that the gentleman likes the Steiger-Sikes substitute provision better?

MR. HATHAWAY. With respect to general duty, yes. Very much.

THE CHAIRMAN. The time of the gentleman has expired.

MR. PERKINS. Mr. Chairman, I yield the gentleman 2 additional minutes.

MR. HATHAWAY. I would just like to wind up and thank the chairman for his indulgence.

As I mentioned at the outset, I think the Daniels bill is a better bill. The important differences are that under the Steiger Sikes substitute there is a tripartite provision for making the rules, for enforcing them, and for judging them. It is important, if you want to draft the Constitution of the United States, to have this kind of a setup, but even though the Daniels bill does not provide for a tripartite division as envisioned by the substitute, nevertheless any individual adversely affected by any action of the Secretary of Labor has resort to the courts, you realize in that way we guard against any usurpation of power by the Secretary of Labor.

Furthermore, if you have a five man Board, as envisioned under the substitute bill, there will be a great deal of difficulty experienced by the general public and by Labor in particular—because they are the ones representing the working men and women in this country—in getting the five man Board to act. It is true they are Presidential appointees and serve at the discretion of the President, and I suppose you could go to the President and say to him, "Your five man Board is inactive in coming out with safety standards," but it is not as easy as going to the Secretary of Labor and exerting pressure on him to come up with something.

I believe everyone agrees we have to have safety standards as soon as possible. This is a drastic situation which we face in this country, with the number of deaths and injuries on the job. The sooner we get enforceable standards the better off we will be. I think the Daniels bill will do the job better and that is all there is to it.

MR. SUTTON of Wisconsin. Will the gentleman yield?

MR. HATHAWAY. I yield to the gentleman.

MR. SUTTON of Wisconsin. I appreciate the gentleman yielding.

It pains me to have the gentleman from Maine speaking in support of the Daniels bill. I do seriously, however, disagree, obviously about this question as to promptness, equity, and ability to put the pressure on. It seems to me the establishment of standards in the working places of this country affect tens of thousands of employers and millions of employees, so something should be done and it ought not be subjected to pressure. What we are saying in essence is if we are probusiness, it ought to be in the hands of the Secretary of Commerce, because they have greater clout with him, and if it is prolabor, then it ought to be in the hands of the Secretary of Labor, because they have greater clout with him. I reject both views and think it ought to be in the hands of an independent commission.

Mr. MEEDS. Mr. Chairman, will the gentleman yield?

Mr. HATHAWAY. I yield to the gentleman from Washington.

Mr. MEEDS. Mr. Chairman, I thank the gentleman from Maine for yielding.

Mr. Chairman, the House of Representatives is fortunate to have this opportunity to debate and then to pass a bill of profound significance to the welfare of the American workingman. This debate should mean more to American labor than all the oratory of Labor Day combined. For it should show American blue-collar and white-collar workers how the Congress is concerned with their health and safety on the job as no other legislation in recent years has done. We owe a debt of gratitude to Mr. Daniels and his Select Subcommittee on Labor for having drafted such an excellent bill, both in terms of the comprehensiveness of its approach and the fairness to all parties concerned.

Rather than dwell on the need for this bill in general or try to catalog its main provisions, I should like to concentrate my remarks upon an aspect to the bill which may otherwise receive relatively slight attention but which nonetheless is of central importance. It is an aspect that we in the House of Representatives confront in a large proportion of the measures we are called upon to consider: namely the relationships between the States and the Federal Government. In view of the important responsibilities of the States in the field of industrial safety and industrial health, these relationships are carefully formulated in this bill, and done so in such a manner that the legitimate rights and interests of the States and the proper role of the Federal Government are both protected while at the same time far greater protection is afforded the American workingman against the hazards of industrial accident and disease than ever before. Let me outline a few of the more important of these provisions as they are found in section 17 of the bill.

In the first place, a State may assert jurisdiction under State law over any occupational health or safety issue with respect to which no standard is in effect under section 6—interim standards—or section 7—occupational safety and health standards—of this bill. Further, States can submit a State plan for the development and enforcement of standards relating to occupational safety and health which the Secretary of Labor shall approve if it meets the following eight requirements: First, a State agency, or agencies, must be designated for administering the plan. Second, development and enforcement of standards must be at least as effective as section 7 standards. Third, pro-

vision must be made for the effective right of entry and inspection of all workplaces subject to the act, at least as effective as provided in section 9 of this act, and must include a prohibition on advance notice of inspections. Fourth, it must contain assurances of legal authority and qualified State personnel. Fifth, it must contain assurances of adequate State funds for administration and enforcement. Sixth, it must make all standards included in the plan applicable to all employees of public agencies of the State and its political subdivisions. Seventh, it must require employers in the State to make reports in the same manner and extent as if the plan were not in effect. And eighth, it must provide that the State agency will make reports to the Secretary of Labor in such form as he shall from time to time require.

Section 17 also provides that in case the Secretary of Labor disapproves such a State plan, due notice and opportunity for a hearing shall be granted. Provision is included in the section for appeal through the courts.

The importance which this bill pays to State initiative and enforcement in this field is also reflected in the Federal grants to the States which it authorizes—in section 21. Planning grants for the next 3 years with up to 90 percent Federal participation and program grants for the next 3 years with up to 50 percent Federal participation are provided. The 50 percent grant is designed to encourage States to identify needs and to develop plans and programs for collecting statistical data, increasing personnel capabilities, and improving administration and enforcement. The 3 year concept of these grants is designed in the virtual certainty that practically all States will, in the next few years, require Federal assistance to provide quality programs of occupational safety and health. But they are, as you see, to be their State programs, and not a monolithic superimposed Federal system.

I should add that the act also makes special provision for safety and health programs within the Federal agencies for the 3 million or so Federal employees. This bill directs each Federal agency to purchase and maintain safety devices and to require their use. Agencies must also keep adequate records and make an annual report on occupational accidents and injuries to the Secretary of Labor.

Clearly, the health and safety of American workers require active, even aggressive, action by both Federal and State agencies pursuing in harmony the same goal. And the need for such action is urgent. I would close by citing the following statement from a recent—August 29—Business Week issue, in its Washington outlook page:

The frustrating Congressional fight over job safety legislation will be intensified by new evidence that more people get hurt at work than statistics show. A recent study done for the Labor Department shows that the 3.2 million disabling injuries reported by industry and government last year should have been at least 4.5 million. In addition, there were some 20 million "serious" work injuries, many of them unreported.

Our task is obvious. We cannot tolerate delay. Let us get the Daniels bill passed now:

(Mr. Mondt asked and was given permission to revise and extend his remarks.)

Mr. PICKENS. Mr. Chairman, I yield 10 minutes to the gentleman from Pennsylvania, Mr. Dent.

(Mr. Dent asked and was given permission to revise and extend his remarks.)

Mr. HATHAWAY. Mr. Chairman, will the gentleman yield to me for an observation I did not have time to make when my remarks were cut off?

Mr. DENT. I yield to the gentleman from Maine.

Mr. HATHAWAY. Let me say further to the gentleman from Wisconsin when you consider the equal pressure I was talking about, it was not with regard to standards themselves but the pressure to get going. Even the Secretary of Labor would be preferable to having a five-man Board. Taking into account the nature of human beings, the five-man Board just will not have the independence. The chairman would go from one member to the other to see if he would go along with him, and if two would, he would be able to get the job done. However, if you have the Secretary of Labor, you cannot pass the buck the way you can with a five-man commission.

Mr. STEIGER of Wisconsin. Will the gentleman yield to me?

Mr. DENT. Shortly.

Mr. STEIGER of Wisconsin. I might say I am interested in that compromise concept substituting the Secretary of Commerce for the Secretary of Labor. I hope the gentleman from Maine indicates his support for such a compromise. But it is interesting. Beyond that, I will say, as I said in my remarks earlier, I attempted to point out one of my problems with this bill, H.R. 16785, is the fact of the establishment of standards because of the appointment of an advisory committee. I believe that has really nothing to do with whether it is a board or the Labor Department. It is just the built-in provision of the Daniels bill as reported.

Mr. Chairman. I am most grateful to the distinguished gentleman from Pennsylvania for yielding some of his time to me.

Mr. HATHAWAY. I thank the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, the apparent controversy at this particular point seems to be on the question of whether there is to be an independent board named by the President or whether there is to be a department head named by the Congress.

Mr. Chairman, history has shown that in this type of controversial legislation, if you really want some action and if you want to get expeditious administration, on every occasion where the administration was left in the hands of a Cabinet official we had better results and the intent of the Congress was closely followed, or more closely followed.

Mr. Chairman, the commission form lends itself to delay. It lends itself to setting aside the intent of the Congress all too often.

Mention was made here of the mine safety bill. The mine safety bill put the full responsibility with the Secretary of the Interior, who then in turn could delegate all appeals to a board if he so desired but he cannot dodge the responsibility. Under a commission-type operation, however, or a board which would set up standards and criteria, he could dodge the responsibility. In fact, that is the concept of the so-called Cabinet form of government. You place within the hands of a department head the full responsibility for all of the activities within the scope of his jurisdiction.

Now, for instance, here is another illustration. When we put through the Commission with reference to seeking a solution to the problems of the aged and the aging—it was my legislation—I voted against setting

up a commission, and to this date practically nothing has been done following the intent of the Congress in that area of very serious Federal concern. I think that particular argument may be a red herring in this whole thing. It is a shadow boxing activity.

Mr. Chairman, the real fight here is to keep from having Federal jurisdiction over industrial safety. That is the real fight. It is now new. It has been going on for so many years. I have heard this same statement made by many individuals over many years.

Mr. Chairman, no one is against industrial safety, but we do not have any legislation. I voted for many years in the State of Pennsylvania to try to get a worthwhile piece of legislation on safety in mines and mining and in the general industrial field. During the days of slavery no idea was even considered that bordered upon making any kind of reforms in working conditions, any kind of advancement in trying to save the life and limbs of men and women who work under those conditions. Then, after slavery, we had a form of conscripted labor and then during those days only the owner of conscripted labor had the responsibility to set up his own little rules to protect himself against his investment. Then, of course, we got into the field, followed by the world practically, of free labor. One of the demands of free labor has been conditions of work that allow many men and women to work within some measure of safety; in being able to do their job without fear of being maimed for life or having to be deprived of their livelihood.

Very frankly, almost every type of employment has some inherent danger in it. It is surprising to see the number of accidents that occur in jobs that appear to be safe from every angle. There is no danger apparently involved. Yet, we had to consider very seriously the question of the safety of miners working on farms. Why? Because we have gone past the old day of the spade and hoe. We are in the day of advanced equipment on our farms. We had in the minimum wage law and the child labor law provisions having to do with certain types of employment on farms that cannot be performed by children because of the nature of the employment.

Mr. Chairman, it would be a sad day, if under the guise of a technicality or a question of a power struggle, as it were, between departments or between the administration and one of its departments, it would totally frustrate the hopes and desires and the needs of the people who work for a living in this country.

For instance, when the mine safety bill, which was passed within a few weeks, a year ago, it was heralded as one of the finest safety measures ever written by any legislative body, but it carried with it a provision, not in that particular law, but in the makeup of the Department of the Interior, which gave the Secretary of the Interior the full run of the legislation, the full responsibility for establishing rules and regulations, setting up criteria, enforcement, administration of it, all the way. However, because of the nature of mine safety and the history of mine safety it had to work through the so-called Safety Board which then works through the Secretary of the Interior, the administrator of the mine safety law is the Director, and the Senate has the right to confirm.

Now, the man selected was withheld from confirmation and we have stayed without a Director until just 3 weeks ago tomorrow.

Now, Mr. Chairman, here is the will of the Congress being thwarted by something that is extraneous to the matter of safety in the mines. There have been many men killed since that legislation was passed who might not have been killed, and there have been many men injured in the mines who may not have been injured if we had proceeded to go along with expeditious enforcement, administration, and the writing of rules and regulations in that area. And that is what will happen with this matter. If it took them a year, within a few weeks, to confirm the Director, can you imagine what will happen with the substitute bill which calls for the confirmation by the Senate of eight persons? And when they go in the Senate to be confirmed or not confirmed, there are matters that are brought into the discussion that have nothing to do with the ability of a person to deal with the problems that will be met under his jurisdiction.

Today is the day in which controversy exists. Today is the day of many misunderstandings. In fact, today is the day of much pretention. So we will find ourselves with eight persons who will have the jurisdiction over this legislation facing the Senate for confirmation before this act can go into effect. If it took us a year under established procedure that has been in existence now for over 30 years, if it took us that long to get that legislation started moving forward, how long do you think it will take for this legislation? I would predict that we will be back here next year, and maybe the year after and maybe the year after that, and there still will not be one defined, definite method of calculating the types, or figuring out just what can be done, or is being done under this legislation.

If we are working on the basis of trying to do something for the 14,000 deaths that occurred in the general industry of this country, and the 2 million disabling injuries since 1968, if we are going to try to do something about that, let us not turn it over to the weaknesses or the strengths, or personal opinions or desires of the Members of the Senate who will probably have little or no regard for what the bill intends to do. They will simply react to the personalities of the men who come before them.

The CHAIRMAN. The time of the gentleman has expired.

Mr. PERKINS. Mr. Chairman, I yield 5 additional minutes to the gentleman from Pennsylvania.

Mr. DEXT. I appreciate this opportunity—I sincerely do appreciate this opportunity to discuss this occupational safety and health bill. It has been a long time coming. It is overdue.

What this really does is to authorize the enforcement of standards developed under the act and assists and encourages the States in their efforts to try to have helpful working conditions.

There was a discussion here a moment ago about the jurisdiction of the States overlapping—or keeping the States that have good safety laws from enforcing them.

No, you do not do that by this legislation. Federal legislation has never yet superseded State legislation when the State law is superior to the provisions of the Federal law.

We took care of that in the mine safety law. For instance, two areas where we have Federal legislation dealing with this very, very important and controversial subject are the Mine Safety Act and the Longshoremen's Safety Act. The Longshoremen's Act comes under the

Secretary of Labor and the Mine Safety Act comes under the Secretary of Mines or the Secretary of the Interior and the Secretary of Health, Education, and Welfare.

Since HEW did not have to go before the Senate for any type of approval of key personnel, it has enforced the portion of the act dealing with miner's lung disease.

I might say to the Congress that while I have been keeping a very close watch on it, I have absolutely nothing but praise for the way the HEW took hold of that serious problem and today there are thousands upon thousands of diseased miners, and widows, and children receiving benefit payments under that act which was passed by the Congress last December.

So throughout this thing, we must remember that the objective is to pass a safety act. We cannot write it so that everybody agrees with it. Besides, everybody does not see the same thing in a piece of legislation.

Last week I wondered to myself whether I was in the same Hall with the same people I had been in before when we were discussing the trade bill. I could not find anything they were saying that I agreed with. So we could not possibly get together on that. But we can get together on the meaning and intent of what we are trying to do today.

Former Labor Secretary George Schulz made this statement :

During the past 4 years more Americans have been killed where they work than in Vietnam.

If we only had an uprising of the youth on the campuses today demanding places of safety for their parents to work, places of reasonable security in which to do their share in maintaining the economy of this country, we would have very little trouble today in writing a safety law.

Remember, outside of the question of the time element of putting into effect this kind of legislation, there is not too much difference between us.

I understand that there are going to be some amendments. I want to compliment the chairman of the subcommittee and the chairman of the full committee on recognizing the need for compromise and recognizing the need for meeting demands that are made in order to get legislation.

It is important, I think, to compromise on everything but on the safety of the workers and we will still get some legislation on the books that will give us an opportunity to say to the men and women who work in the industries of this country that we are aware of the problem and we know the time is long past when we should be discussing it and that it should have been done a long time ago.

For a nation that has done so much with technology—for a nation that has come so far in its great development and advancement—to say that the Federal Government, up until this moment, has shirked responsibility for the safety of the workers in the fields is something that is hardly believable. Yet, only four or five States in the Union have respectable and workable laws in industry.

Although I am very much disturbed over adding new costs to the operation of our production facilities because of the threats from abroad, I would say there is a greater concern and that must be for the production men who do the producing—the men who work in the service industries and the men and women in this country who daily go out

and keep the economy moving and make it safe for all of us to live and to work and to be able to prosper in it. Then I say this legislation is **very, very important.**

If you face up to the realities of the accident rate in this country, if you realize the accident rate is 4 million disabling injuries in 1 single year, how can anybody take the time of this Congress and spend hours debating whether or not this language should be used or that language should be used? It is obvious that the primary goal, which is to prevent accidents, seems to be forgotten, and the entire debate, as I have heard it this afternoon, has been based on how we do it. It has been this kind of debate that has kept this legislation from becoming law for these many years—the question of how we do it. There will always be that argument, and so long as we have two bodies politic vying with each other for acclaim, and two bodies politic under different leadership, we will continue to have the argument of how to do it. It is not any longer a question of how to do it. The question is, it must be done, and I assure the Congress there has been an awakening. The problem in the textile industry has been outlined by the chairman of the subcommittee, who has made a study of brown lung.

The incidence of brown lung in the textile industry has been completely ignored by congressional and governmental agencies over these many years. We find that we have as many or more, percentagewise, crippled ex-textile workers as we have mine workers in the United States, and we are not going to be able to shove them under the rug very much longer. This Congress must deal with that kind of question.

We talk about environment, we talk about ecology, we talk about yesterday's sins and today's problems and tomorrow's virtues, and none of us seem to realize that every time we take up the time of Congress to work on legislation which has a primary and specific purpose of this type, we spend most of our time discussing how to do it. We know how to do it. There is nothing in the legislation, which is sponsored by the good gentleman from New Jersey (Mr. Daniels), and the chairman of the committee (Mr. Perkins), and many others of us—there is nothing in this legislation that will do any of the dire things that were predicted here, because even when the coal mine safety bill was before the House for consideration they told me it would close down every mine in the country if that bill went into effect. It never closed them down. They will not close any plant down unless—and I doubt if there is one single Member who would not want it closed down—unless there is a flagrant violation of the common concept of safety.

Even without the rules and criteria issued by the Secretary, there are certain safety rules promulgated by the industry itself and by the safety committees of industrial workers that are very, very strong. And yet even these rules have been bent once in awhile in view of certain conditions that appear to be a type of accident-incident conditions and yet it really is not. The Secretary having it entirely in his control, will have his fingers right on the problem and can, in short order, countermand an injudicious order given by an inspector in the field. **But you cannot do it with a commission.**

First, most of the Commissioners take the job as an honor and a little bit of side money. Normally they do not do it for a living, and they are not around when you want them anyway. Eight men would decide whether a plant would be burned down or closed down. We have to put

it into the hands of the Secretary to make a decision so that he can say, "Set this aside until I get into it and find out exactly what it is about." No one wants a plant shut down because an inspector says there is imminent danger, but there ought to be some provision for shutting it down.

By the same token, there must be a provision for the injudicious decision by some inspector who reads the letter of the law and does not have brains enough to interpret it. That is one of the problems and one of the arguments that have been given me on this bill. They are not against this act. They are against the kind of inspection services they have been getting in some other areas of Federal law that have made it impossible for them to have redress of any kind for wrongdoing or bad decisions on the part of an agent. I say this bill has no more danger in it for industry than any other safety bill that has ever been proposed. What does it do? It will give safety to the workers in the mines and mills and factories of this country.

I appreciate this opportunity to discuss H.R. 16785, the Occupational Safety and Health Act. This piece of legislation is long overdue and is designed to assure safe and healthful working conditions for our working men and women. It authorizes enforcement of the standards developed under the act and assists and encourages the States in their efforts to assure safe and healthful working conditions by providing for research, information, education, and training in the field of occupational safety and health.

The National Safety Council reported over 14,500 deaths and over 2 million disabling injuries due to industrial accidents in 1968. Since some States have incomplete statistics, we can assume this figure to be even higher. An AFL-CIO safety committee estimated that the true industrial accident rate is closer to 4 million disabling injuries a year.

Surely, faced with these statistics no one can doubt the urgency of the legislation before us today. Since there are too many essential provisions of H.R. 16785 for me to consider at this point, I would like to concentrate my remarks on the provision for training and employee education and the need for more personnel in this field.

Naturally, the primary goal of this act is to prevent accidents. Most necessary to this goal is the appropriation of proper resources for safety training and education. Hearings conducted on this bill revealed a dearth of occupational health experts in this country and both Federal and State safety and health inspectors are severely inadequate in number. There are only 1,600 State safety inspectors and fewer than 100 Federal inspectors. Some States claim that they do cover all or most of their working men and women under an occupational health and safety law, but in most cases it is to no avail because there are too few inspectors to enforce these laws. Only three States have over 100 inspectors; about half have fewer than 25; 16 have a dozen or less; and four States have no inspection personnel at all. Clearly a substantial increase in nonpower with professional competence is needed to bring about a successful program. I am happy to see that H.R. 16785 provides for the expansion of the number of properly trained personnel to work in the field of occupational safety and health.

The bill also provides that the Secretary of Health, Education, and Welfare, together with the Secretary of Labor, conduct education and preparation of safety and health personnel. Unsafe acts or unsafe work practices are frequently the result of failure to train workers in safe

work practices. Unsafe work practices may be of many forms: using the wrong tool, using a tool incorrectly, failure to use guards or protective equipment, taking unnecessary chances, and assuming an awkward position, to name but a few. Such unsafe practices indicate lack of effective safety training and safety training should be a part of the routine job training. In order to promote this greater awareness of safety in the workplace the bill provides for employee and employer training with special emphasis on technical assistance to both labor and management for the adoption of sound safety and health practices.

Unquestionably H.R. 16785 can do much to advance training and employee education and to supply more personnel in this area.

Mr. Chairman, I find it unconscionable for us in the Congress to let another session of Congress go by without enacting this vital piece of legislation. I, therefore, ask my colleagues to join me in support of this necessary bill with the understanding worked out with the sponsor on certain amendments dealing with the eminent danger provisions and the type of enforcement relating thereto.

It is my understanding that there will be refining amendments under the 5-minute rule.

Mr. GAYDOS. Mr. Chairman, will the gentleman yield?

Mr. DENT I yield to my colleague, the gentleman from Pennsylvania.

(Mr. GAYDOS asked and was given permission to revise and extend his remarks.)

Mr. GAYDOS. Mr. Chairman, I wish to compliment the gentleman in the well for his very practical and sincere observations. I think the gentleman is making a very important point, and I am in full agreement, and I wish to commend the gentleman on his past activities with the committee in conjunction with the chairman of the subcommittee, the gentleman from New Jersey (Mr. Daniels), and of course the chairman of the full committee, the gentleman from Kentucky (Mr. Perkins).

Mr. Chairman, we are the greatest industrial Nation in the world. But Americans are beginning to question the price of this achievement. They will no longer tolerate industrial pollution when pollution can be avoided. They will no longer accept needlessly dangerous and defective products. In short, they will no longer accept a "public be damned—business as usual" attitude on the part of the business community which needlessly contaminates and endangers the enjoyment of prosperity.

Yet, in our concern for health, and ecology, we have ignored one of man's most lethal environmental situations. A substantial portion of our population are working men and women. These Americans spend nearly a quarter of their time in surroundings that have escaped the environmentalist. Much has been said about the air we breathe in our streets but little has been said of the polluted air that causes death and disease among factory workers and miners. Much has been said of the harmful effects of chemicals on consumers and on nature in general but little mention has been made of the effect on the American farm or factory worker whose exposure to the danger is far more intimate. This failure to establish priorities among our environmental concerns has lead to some almost absurd situations. It is a fact that in the States today there are 1,600 occupational health and safety inspectors and 2,800 game wardens. Elk and deer are better protected than working men and women.

Hencefore, State and Federal governmental efforts to insure the occupation health and safety of the American worker have been piecemeal and inconsistent. Some of the States have been fairly conscientious. Others have been oblivious to the problem. The Federal Government has sought to protect some workers such as those in mining, transportation, or Government contracts but it has left a substantial number unprotected.

The statistics verify the ineffectiveness of such random protection. There were 14,500 deaths and 2,200,000 injuries on the job in 1968. More Americans died at work in 4 years than in Vietnam in 4. There are 300,000 new cases of occupational disease reported annually.

Some persons suggest that these statistics do not justify increased Federal scrutiny and in fact that they demonstrate the tremendous strides American business has made in making industry safer for its workers in the last 50 years. They also argue that the figures demonstrate that more people are killed on the highway than on the job. I find no such satisfaction in such contentions. The fact that halfway solutions have been halfway effective hardly seems to justify stopping short of a more complete, more effective solution of occupational health and safety problems.

I am not alone in my concern for this problem. The President in a message to Congress in August of last year declared:

There has been much discussion in recent months about the quality of the environment in which Americans live. It is important to note in this regard that during their working years most American workers spend nearly a quarter of their time at their jobs. For them, the quality of the workplace is one of the most important of environmental questions. The protection of that quality is a critical matter for Government attention. . . .

For many decades, governmental responsibility for safe workplaces has rested with the States. But the scope and effectiveness of State laws and State administration varies widely and discrepancies in the performance of State programs appear to be increasing. Moreover, some States are fearful that stricter standards will place them at a disadvantage with other States.

The Federal role in occupation safety and health has thus far been limited. A few specific industries have been made subject to special Federal laws and limited regulations have been applied to workers in companies with both certain Government contracts. In my message to Congress last March on Coal Mine Safety, I outlined an important area in which further specific Federal action is imperative. But something broader is also needed, I believe. I am therefore recommending a new mechanism through which safety and health standards for industry in general can be improved.

The Select Subcommittee on Labor of the House Committee on Labor and Education conducted extensive hearings in Washington, D.C. and San Francisco, Calif., where the testimony of State and Federal officials and private spokesmen was taken. After much deliberation the committee reported out the Occupational Health and Safety Act, H.R. 16785.

The bill is a comprehensive approach to the problems of occupational health and safety. For the first time, there will be a law to insure the health and safety of all American workers. It has been suggested that such additional coverage is unnecessary. This is just not true. Even opponents admit there are over 8 million workers not now covered by Federal law and 3 million Federal employees not covered by any health and safety law at all. The figures prove that even those who are covered are not sufficiently protected. Tell the families of the 11,000 who die needlessly every year that we are doing enough;

tell the 400,000 men and women who develop industrial diseases every year that they are sufficiently protected; tell the 2 million workers injured every year that there is something totalitarian about giving them a safer, more healthful place to work. Solace them with such statements, for I cannot.

The Occupational Safety and Health Act is the first nationwide effort to handle this nationwide problem. The bill strives to incorporate the strengths of the existing system in two principal areas—that of employer-employee relations and that of State regulations of occupational health and safety where it can be effective. The bill does not envision a complete takeover of the field by the Federal Government. On the contrary, the Federal Government would merely see to it that certain minimum requirements were met and that beyond those the health and safety of most workers would be left to those States. The bill has a third characteristic which I think is extremely important. It places heavy emphasis on the importance, on the indispensability of research and training by the Federal Government and by the States, aided and encouraged by the Federal Government.

The new Federal health and safety program would be entrusted to the Secretary of Labor. Such a delegation is logical since our prime concern is the protecting of the laboring American. Opponents suggest that it is a mistake to delegate so much authority to a single agency. They claim it is contrary to the separation of powers concept inherent in one Federal system. Let me say first that the division of authority they envision would defeat one of the primary purposes of this bill—that is a uniform national policy on occupational health and safety. Second, their objection demonstrates a basic miscomprehension of the concept of separation of powers. That concept refers to the system of checks and balances imposed on the legislative, executive, and judicial branches of Government lest the power granted to any of the branches be abused. It has long been a legislative practice to delegate regulatory authority to an agency and at the same time permit the agency to establish a factfinding enforcement procedure. Those aggrieved by the enforcement of the agency's regulations may contest the agency's action in the Federal courts. We have established a similar procedure here. The implication that we have given the Secretary of Labor some heretofore unheard of authority is simply unfounded. We have legislatively granted an administrative agency the authority to insure compliance with the legislative policy subject to review by the judiciary; nothing could be more in keeping with the separation of powers.

We need the kind of standards envisioned here now. Unfortunately, fair, effective standards cannot be instantly promulgated. Serious, extensive, continuing study is necessary. In order to meet present health and safety needs and at the same time recognizing the importance of careful deliberation in this area, interim standards would be authorized. The Secretary of Labor would be commanded to establish interim standards within 2 years of the bill's enactment. Before such interim standards become effective a public hearing must be held to ascertain the position of the parties to be affected by the standard.

The Secretary may select the interim standard from any of three alternative sources. He may accept some existing Federal standard.

He may choose a standard put forth by a nationally recognized group. Finally, a national consensus standard may be accepted. The single criterion used to guide the Secretary in his selection must be the protection of the employees affected. There are obvious advantages in such a process. The Secretary benefits from the expertise of those long concerned with the problem. The work product of these experts is to be submitted to the fire of an adversary hearing.

But these standards are exactly what their name implies—interim. Within 90 days of their promulgation, the Secretary is required to initiate procedures for the establishment of permanent standards. Whether triggered by the promulgation of an interim standard, the petition of an interested party, a representative of a State or one of its political subdivisions, the Secretary of Health, Education, and Welfare, or by the initiative of the Secretary himself, an advisory committee must be appointed to make recommendations within 15 months. A standard must be issued 90 days after a public hearing held on the advisory committee's recommendation and other relevant issues.

The Occupational Health and Safety Act contains fair, sophisticated systems of enforcement. At the heart of this system are procedures for inspection, investigation, and reports to facilitate enforcement of the act. These procedures and subsequent enforcement steps have been drafted with an eye to the protection and convenience of the employee acting in good faith. Inspections are to be conducted at reasonable times; every effort is to be made to avoid overburdening or inconveniencing the employer. In case of less serious transgressions, the employer may contest the findings and even where he chooses not to object, he has more than 2 weeks to bring his operation within the law. Where trade secrets are disclosed in the process of the inspection or investigation they are to be treated with the strictest confidentiality. Even the penalties for violations are relatively mild considering the volume of business in the industry involved.

There is even authority for the Secretary to grant "variations, tolerances, and exemptions" in the interest of national defense.

In summation, I would like to point out that this bill seeks to answer a serious need of the American working man. It would protect at least 11 million workers now outside Federal protection; it would protect at least 80 million workers now afforded insufficient protection. Occupational health and safety is the one area where our concern for the environment, for protection from unsafe products, and for the welfare of the "silent majority," merge. It is difficult for me to believe that Congress will ignore the health and safety of millions of Americans in this day of growing concern, for the sake of business as usual.

Mr. SCHERER of Wisconsin. Mr. Chairman, I reserve the balance of my time.

Mr. PICKENS. Mr. Chairman, I yield 6 minutes to the gentleman from New York (Mr. Scheuer).

Mr. DONELL. Mr. Chairman, will the gentleman yield?

Mr. SCHERER. I yield to the gentleman from New York.

Mr. PICKENS. Mr. Chairman, if the gentleman will permit me, I like to ask the gentleman from New Jersey a question.

As my distinguished colleague knows, the U.S. Bureau of Mines of the Department of the Interior now has jurisdiction over the health and safety conditions of many mining industries pursuant to the Federal Metal and Non-Metallic Mine Safety Act of 1966. Does section 22(b) provide for a transfer of this jurisdiction to the Secretary of Labor?

Mr. DANIELS of New Jersey. Mr. Chairman, if the gentleman will yield, the answer is "No." Section 22(b) would only allow the Secretary of Labor to assert jurisdiction over health and safety conditions within the mining industries now subject to the Federal Metal and Non-Metallic Mine Safety Act when the Secretary of Interior has failed to exercise his statutory authority to set health and safety standards or otherwise declines to assert any jurisdiction over the mining industries under that act. In other words, only when the Secretary of Interior completely abrogates his responsibilities under the Federal Metal and Non-Metallic Mine Safety Act would the Secretary of Labor be allowed to invoke section 22(b) and set standards for the mining industries now subject to the Mine Safety Act.

Mr. SCHEUER. Mr. Chairman, I congratulate the subcommittee chairman, the gentleman from New Jersey (Mr. Daniels) for the tremendous effort that he and others have made in bringing this bill to the floor of the House.

Mr. Chairman, I wish to add my support for passage of H.R. 16785, the Daniels Occupational Safety and Health Act. The Daniels bill will do what has long been needed—provide strict but reasonable standards of health and safety in the workplace, and make it possible to enforce these standards effectively.

Mr. Chairman, the hearings held in September, October, and November of 1969 by the Select Subcommittee on Labor, chaired by my distinguished colleague, Representative Daniels of New Jersey, made it unmistakably clear that a strong program for dealing with hazards of the workplace is urgently needed. On-the-job safety has become one of modern industry's most pressing problems. The annual toll taken by occupational accidents and illness is of frightening proportions, and existing efforts to meet this problem are plainly insufficient.

Mr. Chairman, are we going to need a major catastrophe, a slaughter, before we will get action? Must we have a holocaust such as a disaster in the coal mines of Farmington, W. Va., where 78 miners were killed just before Thanksgiving in November 1968? That tragedy sparked the emotion and initiative which led to passage of the 1969 Federal Coal Mines Health and Safety Act. Are we in truth a government only by crisis, a claim made by those who would derogate the Congress of this country?

Unsafe as is coal mining, there are jobs in the United States which are even less safe. The Metropolitan Life Insurance Co. points out that the accidental death rate for tunnel construction workers is three times as high as that in coal mining, and for electrical construction workers twice as high as in coal mines. Another extremely dangerous job, according to Metropolitan Life, is that of lumbermen. Lumbermen have a death rate four times that of standard insurance risks, and are especially susceptible to injuries of the spinal cord, bones, and joints. Some of these job dangers may be inevitable, but safety experts

are becoming more aware and more vocal about the fact that many dangers in these and other industries and occupations are controllable and avoidable.

No doubt you have heard the grim statistics on occupational death and injury before. But they bear repeating, they deserve repeating, they should be repeated.

Over 14,000 workers die each year as a result of job-rated causes. In only 4 years' time, as many Americans have died because of their employment as were killed in almost a decade of our country's involvement in Vietnam. In the last 25 years—since the end of World War II—more than 400,000 Americans have been killed by industrial accidents and disease. This is a larger total than the 300,000 dead which World War II cost our Nation, and a more tragic figure because so much of it could have been avoided had we had a law such as the Daniels bill.

Which false prophet was he who said that work never killed anyone.

So far I have mentioned figures only on actual deaths. Besides this, about 2.5 million workers suffer on the job injury every year, according to Labor Department estimates. And this statistic, incredibly high as it is, has been challenged as underestimating the actual situation. In testifying before the Senate last year, Ralph Nader estimated that annually between 200,000 and 400,000 industrial accidents go uncounted by Federal and State tallies. A partial explanation for this, Nader said, is that there are few incentives for reporting injuries and fewer penalties for not reporting them.

A recent report by safety expert Jerome Gordon, prepared under contract for the U.S. Labor Department, substantiates Nader's conclusions. The Gordon study estimates that present Labor Department industrial accident statistics understate work injuries by about 200,000 cases a year. One basic cause for this understatement, according to the Gordon report, is improperly run and underfunded programs operated by the Federal Government and the National Safety Council. Gordon also blames industry domination of private safety-standards organizations, which allows most firms literally to compose their own records on industrial accidents.

As if all these facts and figures are not depressing enough, the cruder comes in the knowledge that the overall trend of injuries on the job has worsened in the last decade or so. Job safety began to slip back after 1958, when the factory accident rate had fallen to a record low of 11.4 disabling injuries per million man-hours worked. By 1968, the rate had increased by over 20 percent to 14 disabling injuries per million man-hours worked.

Mr. Chairman, the need is clear. The facts have been demonstrated repeatedly. The time for action is now. I urge my colleagues to join in support of the Daniels Occupational Safety and Health Act, H.R. 16780.

(Mr. Schmitter asked and was given permission to revise and extend his remarks.)

Mr. PERKINS. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Illinois (Mr. Annunzio).

Mr. Annunzio asked and was given permission to revise and extend his remarks.)

Mr. ANNUNZIO. Mr. Chairman, as one of the early sponsors of the occupational health and safety proposal, I am proud to support the legislation now under consideration by the House, H.R. 16785,

the Occupational Safety and Health Act of 1970. The bill has the potential to be a landmark of the utmost importance in the history of social legislation. It is designed to insure a safe and healthful work environment for the 80 million men and women workers in our country, and hence to benefit their dependents as well.

Large numbers of working people spend an average of 40 hours a week in some of the most polluted, physically hazardous, and mentally devastating environments imaginable. Eighty percent of these citizens work in places where no type of health service is provided, Mr. Chairman, and the protection given the remaining 20 percent varies from excellent to minimal, according to the Environmental Actions, Inc.

At a time when we are much concerned with enhancing the quality of life in general, it is inconceivable that 14,500 workers are killed each year in industrial mishaps, while 2.2 million more are disabled through job-related accidents.

A recent study authorized by the U.S. Department of Labor and conducted among a sample of California businesses revealed that this figure might be 10 times too low, and that the national figure might be closer to 25 million injuries. We do not even have a realistic estimate of the number of workers who suffer or die from occupationally caused disease.

Hopefully, we will learn this from the research which is provided for in this bill. Our almost total ignorance of the nature and extent of the problem of work-related disease is itself a cause for alarm and action.

Although we do not know the exact magnitude of the problem, we do know that industrial accidents alone inflict, by far, a greater number of casualties each year than has the Indochina war.

The highest casualty rate in Vietnam occurred in 1968 when 12,588 of our servicemen were killed. In that same year, even conservative estimates show that 14,300 workers were killed on the job—1,812 more than died in Vietnam.

The National Safety Council has found that during the first months of 1967, the total number of injuries and deaths rising out of the work situation were far greater than those due to motor vehicle accidents. Specifically, there were 873,600 motor vehicle injuries or deaths. Yet there were over 2.2 million work injuries resulting in temporary or permanent disablement or death.

In 1967, work accidents and illnesses cost the American economy over \$8 billion. Ten times more man-days are lost in America every year due to injury than are lost because of strikes, lockouts, and walkouts all combined.

Mr. Chairman, I want to commend the distinguished chairman of the Select Labor Subcommittee, the gentleman from New Jersey, Mr. Daniels, for his able work in structuring this landmark bill and bringing it to the House floor for consideration. I would also like to recognize the chairman of the Education and Labor Committee, the gentleman from Kentucky, Mr. Perkins, for his contributions and foresight in reporting such a strong bill from the committee. I congratulate them on this momentous achievement in behalf of all Americans.

This bill is not in response to some sudden disaster, Mr. Chairman, but to the continuing health and safety hazards of our Nation's accelerated industrialization. The 40 workers who die each day, the 6,000 who are injured each 24-hour shift, represent personal tragedies which

have not yet aroused any great public outcry. Yet the work force of America has a vital and personal concern in the passage of this legislation. The figures, as appalling as they are, can never adequately convey the agony of the injured and the anguish of each individual family, much less the discomfort that arises from unhealthy, unsafe working conditions under which the health of millions of workers is being eroded.

While some States have acted to establish and enforce safety and health standards, only a relative few have modern laws and have devoted adequate resources to their administration and enforcement. At least eight States have no identifiable programs in occupational health at all. In the States today, there are a total of 1,300 health and safety inspectors, and 2,800 game wardens. Elk and deer are better protected, Mr. Speaker, than working men and women.

In States with strong occupational safety and health standards, the accident rate is 10 per 100,000 workers. In States with weak programs, it is 110 per 10,000—a number 500 percent greater. In no State are enforcement standards adequate to force total industry compliance with existing standards.

The Occupational Health and Safety Act of 1970 would show our concern for a healthy environment for all of our citizens. It would especially show, Mr. Chairman, that we as a nation will no longer tolerate a situation where the cost of employment for many individuals is the strong likelihood that they will be maimed or crippled for life. Despite the many disruptive forces in our land today, I feel that our increasing concern for the quality of life and our compassion for the individual hold out a bright promise for tomorrow.

The CHAIRMAN. The time of the gentleman from Illinois has again expired.

Mr. ANNUNZIO. Mr. Chairman, I wonder if the gentleman from Wisconsin would yield to me 1 additional minute?

Mr. SPENCER of Wisconsin. Mr. Chairman, I shall be happy to yield 1 minute to the gentleman from Illinois.

Mr. ANNUNZIO. Mr. Chairman, as the former director of labor for the State of Illinois where I have had broad experience in the implementation of workmen's compensation and the occupational disease bill in Illinois, I can unequivocally state that the Jay's amendment, as provided for in the Senate bill, will weaken this legislation on behalf of the working men and women of America. The full responsibility for the implementation of this act must rest in the Secretary of Labor if this bill is to be meaningful.

All of us are familiar with the Board that was appointed known as the Mine Safety Review Board. A perusal of the list of members for that Board will show that none of the members are representatives of organized labor; none are people who have had experience at the grassroots level in the industrial plants of America; or who have a keen understanding of the problems that confront us at this time.

I vividly recall when I attended my first safety conference in Washington, D.C., in 1950, and for over 20 years those who have supported the objectives of this conference have stated to the various legislatures of America that too many lives and too many man hours of work are being lost because American workers are not being adequately protected. The American worker has waited too long. Let us put the re-

sponsibility where it belongs—on the highest appointed labor official in Government—the Secretary of Labor.

I wholeheartedly support, as one of the original cosponsors, the Daniels Occupational Safety and Health Act and the amendments recommended by the subcommittee. I urge my colleagues to vote down the Steiger substitute. I urge my colleagues to support the Daniels bill so that we can get on with the business of protecting our fellow citizens.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. ANNUNZIO. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. Did I hear that statement correctly?

Mr. ANNUNZIO. You heard it correctly.

Mr. STEIGER of Wisconsin. Well, had I only known.

The CHAIRMAN. The time of the gentleman from Illinois has again expired.

Mr. STEIGER of Wisconsin. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois (Mr. Railsback).

(Mr. Railsback asked and was given permission to revise and extend his remarks.)

Mr. RAILSBACK. Mr. Chairman, at the appropriate time I intend to offer an amendment which I believe will strengthen the legislation that we now have under consideration.

Mr. Chairman, a main purpose of this legislation is to strengthen State programs concerning industrial or in-plant safety. Traditionally, industrial safety programs have been aimed at the design and arrangement of the plant itself and the establishment of safety rules and practices to be followed by the employees. The bills before us today, however, are even more inclusive. They cover all types of products which might be used on worksites and would permit each State to issue design standards for the safety of these products.

The difficulty with product design standards is that products are frequently mass produced on a national market basis and without any particular plant or worksite in mind. Contrasted with a plant, which is nearly always custom designed and laid out, some products which might be used in that plant are often not custom designed by instead are of a uniform design and are nationally distributed and sold. Thus a forklift or tractor, or even a lawn mower, are all often used in or around a plant or worksite and yet are seldom designed or manufactured for any particular customer. These products are designed for a national market. The problem which I hope to avoid would arise when under this legislation the States promulgate standards which deal with the design of such products. It would be possible to have each of the 50 States enact a varying standard and thus require the product manufacturer to custom build an unnecessary expensive and slightly different model of his product for each of the 50 States. Even if the manufacturer did this it would not solve the problem a user of the product would have where he brought the product into several States with varying standards and might have to customize it for use in each of those States.

My amendment would specify that with respect to the standards which a State may promulgate, the standards should not present an undue burden on interstate commerce and should only be applied to the area of product safety when a compelling local condition can be

shows, unless there is no national or Federal standard applicable. In other words, where a product is built to a Federal standard, it should not have to be custom built to varying State standards, either by the manufacturer or the user, unless required by compelling local conditions.

It should be noted that my amendment does not deny the States the right to issue product design standards, it only requires that there be a sufficient showing of compelling local conditions which would justify the deviation from a national standard. In this regard, I note the recommendation of the National Commission on Product Safety, created by Public Law 90-146 in 1967:

That a mandatory Federal safety standard for a consumer product preempt any State or local standard, with appropriate provision for exemption where clear and compelling conditions in the State make it necessary.

The Product Safety Commission, in explaining its recommendation stated:

States seldom impose safety standards for consumer products. Where requirements apply to product safety, these vary considerably. For this reason, many manufacturers cannot produce for a national market except by designing different models for individual States. Ultimately, consumers pay the wasteful cost of several models being produced where one would do.

I think that we could all agree with such reasoning.

The Commission concluded that:

With a provision for exemption of State regulations that do not unduly burden interstate commerce, national safety standards for unreasonably burdensome consumer products can be expected to enhance protection for the public and conserve time, money, effort, and resources. At the same time, the possibility of exemptions will leave States free to develop innovative safety methods and to satisfy unusual local needs.

This is exactly the approach which my amendment is intended to take.

I might just mention that this amendment was offered in the Senate by Senator Saxbe and was accepted by the Senate committee, and by Senator Williams. I had a chance to discuss this amendment with the sponsor of what will be a substitute amendment, and it was acceptable to him—I have not had a chance to discuss it with all the leadership of the committee on the Democratic side, but I have had the chance to talk to some, and I will be glad to give them a copy of the amendment—but it is my sincere hope that the amendment will be acceptable to them as well.

Mr. ERLÉNBERG. Mr. Chairman, will the gentleman yield?

Mr. RAYBACK. I yield to the gentleman from Illinois.

Mr. ERLÉNBERG. Mr. Chairman, I thank the gentleman for yielding, and I have asked for this time so that I might direct a question to the chairman of our committee.

As I understand it, the amendments will be presented either by the chairman of the committee, or the chairman of the subcommittee, the gentleman from New Jersey?

Mr. RAYBACK. If the gentleman will yield, I personally see no objection to the amendment, but I do wish to discuss it with the gentleman from New Jersey (Mr. Danaher), before I make a commitment on the amendment.

Mr. ERLNBORN. Mr. Chairman, could the gentleman tell me whether the five amendments that are intended to be offered from that side will be offered as amendments, or will they be incorporated in a rewritten proposal in the form of a substitute?

Mr. PERKINS. That decision has not as yet been arrived at, but it is my thinking that if a substitute is voted down that these amendments will be offered at the appropriate place in the committee bill.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STEIGER of Wisconsin. Mr. Chairman, I yield 3 additional minutes to the gentleman from Illinois.

Mr. ERLNBORN. Mr. Chairman, would the gentleman yield further.

Mr. RAILSBACK. I yield to the gentleman from Illinois.

Mr. ERLNBORN. Mr. Chairman, I just wanted to make the observation it would make a difference to those Members, such as the gentleman in the well, who are proposing to offer amendments to the bill, whether the amendments were offered individually as amendments or incorporated in an overall substitute.

Mr. PERKINS. I think that you gentleman can assume that if the substitute is voted down that these amendments will be voted on separately to the committee amendment.

Mr. ERLNBORN. Mr. Chairman, I thank the gentleman.

Mr. Chairman, I want to compliment the gentleman in the well for calling this problem to our attention. And having worked long, diligently and very strenuously, as I know the gentleman has, from having talked to the gentleman over the past several months concerning this problem, I can say that it was not easy to find the kind of language that would resolve the problem without in some way or other giving rise to other problems, and I think the gentleman has done that.

I think it is of special interest that the language the gentleman uses, or is proposing to offer, is similar or identical to the language that has been proposed by the Product Safety Commission.

So I do want to compliment the gentleman on the fine work he has done.

Mr. RAILSBACK. Mr. Chairman, I thank the gentleman very much. I also want to thank the distinguished chairman of the committee for the remarks that he has made.

Mr. PERKINS. Mr. Chairman, I yield such time as he may consume to the gentleman from Arizona (Mr. Udall).

(Mr. Udall asked and was given permission to revise and extend his remarks.)

Mr. UDALL. Mr. Chairman, I wish to commend the chairman of the full committee and the chairman of the subcommittee, and all of the distinguished members who have worked so long and hard to bring this bill to the floor. It is a fine piece of legislation. I strongly support it.

Mr. Chairman, at a time when our country is intensely concerned with environmental problems, it is hard to accept resistance or apathy toward Federal legislation on occupational health and safety. The factory, mill, office, and shop is the environment for millions of working Americans. In industry after industry, the workplace is a polluted place—with a dangerous pollution that robs working people of their health and their lives. These intolerably hazardous conditions must

be ended as rapidly as possible. For this reason I wholeheartedly support the Daniels Occupational Safety and Health Act, H.R. 16785.

No President called to public attention the problem of occupational injuries and diseases in American industry generally until Lyndon Johnson did so in 1968. But the bills introduced in support of President Johnson's recommendations to end the loss of life, limb, and sight due to industrial accident and occupational illness died in committee hearings during the 90th Congress. On August 1969 President Nixon reintroduced the proposal for a Federal occupational safety and health law.

H.R. 16785 is a carefully thought out statute, developed after 15 days of public hearings and seven markup sessions under the able and dedicated chairmanship of my esteemed colleague, Representative Daniels of New Jersey. From my study of this bill, I believe it will establish fair and reasonable standards for the prevention of on-the-job accidents and illnesses, as well as effective procedures for the enforcement of those standards.

Mr. Chairman, technology and shifting consumer preferences have been causing fundamental changes in our country's occupational structure and industrial processes. These changes are expected to continue to occur at an even faster rate than in the past. It has been estimated that each year approximately 600 new chemicals are introduced in America's factories, mills, and laboratories. At the 1969 hearings on occupational safety and health, the Daniels subcommittee learned that roughly 6,000 chemicals currently are in use in industry. And yet—note this significant statistic—health authorities today know the safe threshold values for only about 500.

These facts say something to me, and to all of us. They say that we had better learn more about the chemicals and other substances which are being used in increasing numbers and variety in the production processes of this country, especially whether or not they are toxic. They tell us that we need more measurement as to the amounts of these materials which are being employed, and more knowledge of safe threshold levels. They warn us that we urgently need more regulation of the use of these products and greater prevention of their abuse. This whole area of the industrial consumption of chemicals and of the occupational diseases which result is one of the major preoccupations of the Daniels bill—and the one to which I am primarily addressing myself today, Mr. Chairman. Time constraints restrict me to this field, although as you know the Daniels bill goes beyond occupational health, and concerns itself also with the more visible and well-known question of industrial accidents and on-the-job injury.

No one knows for sure how many workers have been struck down by silent killers in the form of corrosive chemicals, noxious fumes, and debilitating dust particles that have become commonplace ingredients of the manufacturing process. One of the deadliest and most widespread of industrial illnesses is pneumoconiosis, commonly referred to as blacklung disease. This is an occupational hazard of coal miners, caused by a buildup of coal dust in the lungs. The Coal Mine Health and Safety Act of 1969 has done something about this illness by establishing maximum allowable coal dust standards in mines.

But there are other potent respiratory diseases to which millions of American workers are subject and for which virtually no Federal regulation exists. In the insulating trade, according to estimates of Dr.

Irving J. Selikoff of New York's Mount Sinai School of Medicine, 8 percent of all workers will die from asbestosis caused by breathing tiny particles of asbestos. The disease was identified in 1924: when New York City passed safety standards last spring for the spraying of asbestos, it was the first city in the United States to do so. Ah yes, the mills of the legislative gods grind slowly—nearly half a century behind the wheels of industry—while the specter of noiseless and often invisible industrial death stalks the land.

Among the worst man-killers, according to Senator Harrison Williams of New Jersey, are the textile mills. More than 100,000 of the Nation's 1 million textile-mill workers have contracted bysinosis, or brown-lung disease, from inhaling cotton dust, according to the Senator's estimates. A study of men working the coke ovens in the steel industry showed they suffered a lung cancer mortality rate 62 percent higher than the average steel worker who does not breathe the sulfide gases exhausted by the coke ovens. Another example of what Ralph Nader aptly terms "a silent kind of violence" is berylliosis, a lung disease caused by the inhalation of dust or fumes from the space-age metal beryllium. Berylliosis is a prime instance of the byproduct impact on worker health and safety of new materials, new processes, and new technologies, posing a whole new set of hazards and potential hazards. Silicosis is another major crippling and deadly respiratory disease common to industry.

Mr. Chairman, there is an unconscionable gap between the minimal protection being given to several million workers regularly exposed to the gases, dusts, and mists of American industry, and the protection they need. There is a frightening gap between our knowledge about these substances, and what we need to know. There is a depressing gap between the supply of trained personnel to develop standards for a safe handling of these materials and to enforce observance of those standards, and our requirements for these personnel. The Daniels bill is designed to narrow and eventually close these gaps. I urge my colleagues to support this bill now.

Mr. PERKINS. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Ohio (Mr. Feighan).

(Mr. Feighan asked and was given permission to revise and extend his remarks.)

Mr. FEIGHAN. Mr. Chairman, I commend my colleagues, the chairman of the Committee on Education and Labor, the gentleman from Kentucky (Mr. Perkins), and the chairman of the subcommittee, the gentleman from New Jersey (Mr. Daniels), and the members of the full committee for bringing an occupational safety and health bill to the floor of the House.

Occupational health and safety is an area which cries out for a positive Federal role. State and private industry safety measures are piecemeal, fragmented, or nonexistent.

In the latest year in which any data are available, 1968, the evidence is staggering—14,000 workers killed, 2,200,000 suffered disabling injuries, 390,000 occupational illnesses—and yet we are told that this information is based upon incomplete reports. The totals may even be larger.

I have listened to the debate with great interest, in particular on those matters to which the committee has given an indication that it will accept amendments to be offered by Mr. DANIELS to the committee

bill to eliminate any possible objection to the procedure the bill would authorize in securing safe working places. With these amendments I agree. The amendments according to the documented record today will modify the reported bill in the following respects:

First, the "general duty" will be modified to require only that employers provide employment "free from recognized hazards" and there will be no penalty for violation of duty;

Second, the provision authorizing the Secretary to order closelowns without a court order in imminent danger situations will be deleted and exclusive reliance placed on judicial remedies;

Third, the provision that has been attacked as giving an employee the right to "strike with pay" will be deleted;

Fourth, the monitoring provisions will be revised to eliminate fears of excess burdens on employers; and

Fifth, the Construction Safety Act will be amended, as in H.R. 19200, to include all contractors instead of just those performing Government work.

I urge my colleagues to support the committee bill as modified.

Mr. PERKINS. Mr. Chairman, I yield the remaining time on this side to our distinguished colleague, the gentleman from Michigan (Mr. O'Hara).

(Mr. O'Hara asked and was given permission to revise and extend his remarks.)

Mr. O'HARA. Mr. Chairman, the question on this bill, of course, is not whether or not we should have an Industrial Health and Safety Act. That question now seems to be settled and it is a good thing for the country that it is. We can all agree that the toll of death and of injury that the workers of this country suffer in on-the-job accidents—14,500 deaths a year, 2 million disabling injuries a year, and other millions of serious but not disabling injuries—is too high and that it has been paid for too long.

But there are differences, Mr. Chairman, and very substantial differences among the proposals that have been made to correct this problem. I believe very strongly that the bill reported by the committee is a reasonable, careful and a cautious approach to this problem. I say that despite anything you may have heard to the contrary. It is a reasonable, careful, and cautious approach to this problem for which the gentleman from New Jersey (Mr. Daniels) is to be commended because it has been under his leadership and that of the gentleman from Kentucky (Mr. Perkins) that this bill has been brought this far. It is only with great reluctance that I would accept the amendments, which it is my understanding will be offered by the majority during the consideration of this bill.

I do not think this bill goes too far the way it stands. I think, if anything, this bill does not go far enough the way it stands—with 14,500 killed in industrial accidents this year and 2 million disabled in industrial accidents. No, Mr. Chairman, this bill does not try to go too far, too fast.

But I will accept the amendments which will be offered by the majority because I recognize that they are necessary, unfortunately, in order to correct misimpressions that have been deliberately fostered by the opponents of this legislation. I make no issue about calling them opponents of the legislation. They are the same people who came before the committee in the last Congress and said that they did

not want any bill at all—no legislation is what they wanted. They came before the committee in this Congress and in response to a question said that they still preferred no legislation at all, but they would accept the administration bill. And, indeed, the administration bill was very close to no bill at all. But even after the acceptance of these amendments, which we do only reluctantly, there is still an important difference between the committee bill, the Daniels bill, and the bill that my friend, the gentleman from Wisconsin is offering. Under the Daniels bill, it is at least possible to fix responsibility and to find out who it is that is supposed to set the standards and who it is that is supposed to enforce them. If the program is not adequately implemented and if not strictly enforced for the American people to be able to hold accountable the responsible officials—in this case the President and his Secretary of Labor.

It is proposed that we substitute for that accountability, which is the most important part of this legislation, a faceless board, none of whom will be known to the people, none of whom will be accountable to the people, and behind whose skirts an entire administration will be trying to hide. That is an important difference, and even with the reluctant acceptance of the amendment that will be offered from the majority side of the committee, that important difference will remain. Mr. Chairman, I hope that this committee will reject the substitute and agree to the committee bill, the Daniels bill, with the amendments that will be offered.

The CHAIRMAN. The chair recognizes the gentleman from Wisconsin (Mr. Steiger).

Mr. STEIGER of Wisconsin. Mr. Chairman, I yield myself 3 minutes.

The CHAIRMAN. The gentleman is recognized.

Mr. STEIGER of Wisconsin. Mr. Chairman, I have listened with interest to the remarks of the gentleman from Michigan as well as those of the other speakers who have directed their attention to the issue that we shall face tomorrow when we vote on the Steiger-Sikes substitute which will be offered.

Let us understand, first of all, the amendments which the distinguished and able chairman of the subcommittee, the gentleman from New Jersey (Mr. Daniels) has announced he intends to offer are good. I do not deny that. They significantly improve the bill. But they do not do it anywhere near enough. You are still going to be faced, even as amended, if the substitute is defeated, with an imperfect bill reported by the Committee on Education and Labor, imperfect in at least two regards, not to belabor the point.

One is the failure to provide for the separation of powers. The bill H.R. 16785, maintains the Labor Department and the Secretary of Labor as a czar to set the standards to enforce and inspect plant sites and to penalize those who have violated the law.

Second is the failure to change the status of the inspector himself. Though under the amendment that the gentleman from New Jersey intends to offer the imminent danger section will be modified to bring it into line with the Steiger-Sikes substitute, still the issuance by an inspector of the citation forthwith with a penalty to be levied at a later time, is not good.

Going down the list, Mr. Chairman, of those who have supported the concept of the independent board to set the standards and the separation of functions—the Department of Industry, Labor, and

Human Relations of the State of Wisconsin, the Department of Labor, State of New York, the American Society of Safety Engineers, the Department of Labor and Industry, Commonwealth of Pennsylvania, the Industrial Medical Association, the American Academy of Occupational Medicine, the National Safety Council, the Council of Occupational Health, American Medical Association, the Ad Hoc Committee on Occupational Safety and Health, International Association of Government Labor Officials, the American Industrial Hygiene Association, the International Association of Industrial Accident Board and Commissions, the American Public Health Association, the American Conference of Governmental Industrial Hygienists, the Building and Construction Trades Department—I really wonder, are these the people the gentleman from Michigan is talking about who are not in favor of the bill and who oppose any kind of legislation? The answer is, obviously, no. The gentleman from Michigan knows it. These are people who are committed to having a bill passed, but who believe the separation of functions is an absolutely essential part of equitable legislation.

So these, then, are the issues which we will face tomorrow as we come to a close of the debate today. The question is whether or not we can be willing to accept the bipartisan compromise to be offered by the gentleman from Florida and myself in an effort to get a bill that can be passed in this session, and which can be supported by all segments of the economy and bipartisanly here in the Congress, or whether we will have to try to maintain the posture of the Committee on Education and Labor.

I hope the substitute will be agreed to. I yield back the remainder of my time.

MR. KATH. Mr. Chairman, every factory, mill, and office in this country could well post a cautionary sign next to its front entrance—"Warning: Working May Be Hazardous to Your Health." Rapidly changing technology has been introducing novel and gravely serious threats to the health and safety of our employed men and women. Today we are asking our workers to perform far different tasks from those they performed 15 or even 5 years ago. It is only right that the on-the-job protection we provide for those workers also be up to date.

For this reason I am strongly supporting the Daniels Occupational Safety and Health Act, H.R. 16785. I believe it to be a carefully thought-out instrument to help prevent industrial accidents and occupational illnesses. And it is needed, Mr. Chairman. It is urgently needed because of the dangerous weaknesses in the present laws and rules that tend to stem the tide of rising job-related hazards.

Too, many industries and businesses have made commendable progress on their own in protecting worker health and safety. Some have managed to reduce the frequency of accidents by as much as 80 or 90 percent, demonstrating what can be accomplished with proper effort. But such voluntary successes are not widespread nearly enough.

Collective bargaining agreements often include safety and health provisions. Many professional organizations have suggested voluntary standards. Groups like the National Safety Council have worked to promote safer working conditions. But the overall record is spotty and uneven.

As far as legislation is concerned, for many decades governmental responsibility for safe workplaces has rested mainly with the States. Again, the scope and effectiveness of State laws and State administration vary widely. Some States are fearful that stricter standards will place them at a competitive disadvantage with other States in attracting and holding industry.

A few jurisdictions—such as California and New York—have strong occupational safety and health programs. But most State programs are inadequate. Although all States recognize in varying degrees their responsibility for insuring the wage earner a safe and healthful working environment, many State safety laws apply to only limited areas of activity, such as boiler and elevator safety. State programs are becoming even more inadequate with the introduction of new industrial chemicals and processes that menace health and life in complex and often unpredictable ways.

Some States have very few inspectors, and spend as little as 2 cents per worker a year in job safety enforcement. There are only 1,600 State safety inspectors altogether in this country. Only three States employ over 100 inspectors each; about half the States have fewer than 25 inspectors each; 16 have a dozen or fewer; four States have no inspection personnel at all. Only three States have inspectors who are trained in the field of occupational health and hygiene. Ironically, there are twice as many fish and game wardens in the United States as there are safety and health inspectors. The Daniels subcommittee hearings in 1969 revealed a severe shortage of occupational health experts in this country.

Senator Harrison Williams, of New Jersey, chairing the Senate Labor Subcommittee considering job safety legislation, has pointed out that some 65 million workers in smaller plants have little or no occupational health protection, for which he blames "archaic laws, administered by inadequate, ill-paid and ill-trained staffs, a wide variation in safety standards and starvation budgets." The chairman of the full Senate Committee on Labor and Public Welfare, Senator Ralph Yarborough, of Texas, has been equally caustic. He has compared present on-the-job safety efforts to "a sneeze in a hurricane." The Federal role in occupational safety and health has been severely limited so far. The Walsh-Healey Public Contracts Act sets standards, but these apply only to workers employed on Federal contracts for supplies and equipment. Safety standards also are included in the McNamara-O'Hara Service Contract Act of 1965, applying to workers engaged in contract work supplying services for the Federal Government. Great strides forward were made last year by this Congress when it enacted the Federal Coal Mine Health and Safety Act and the Federal Construction Safety Act, but of course these apply only to the specific industries mentioned, although admittedly industries which are among our country's most hazardous.

Something broader is needed in the way of Federal job safety legislation. These are not my words, but those of President Nixon in his message of August 6, 1969, recommending Federal occupational safety and health legislation. In so doing he was repeating a recommendation also made in 1968 by Lyndon B. Johnson.

I heartily subscribe to the recommendations of our present and past Presidents, and I wholeheartedly endorse the Daniels bill, H.R. 16785, as the best way to do the job. I hope all of you will endorse it, too.

Mr. MICHEL. Mr. Chairman, I am strongly opposed to H.R. 16785 on the grounds that it would place unlimited power in the hands of the Secretary of Labor and will work a hardship on industry in my State of Illinois as well as other States.

On the other hand, I realize that everyone is interested in effective and reasonable occupational health and safety legislation. For this reason I feel that H.R. 16785 introduced by Representatives Steiger and Sikes is a more reasonable measure than the Daniels bill because it contains, among other matters, the following elements:

First, Creation of an independent national occupational safety and health board, composed of qualified experts to establish standards;

Second, Authorization of the Secretary of Labor to enforce these standards;

Third, An occupational safety and health appeals commission to hold hearings on alleged violations and impose fines; and

Fourth, A provision that a plant could be ordered closed only by order of a U.S. district court.

H.R. 16785, if passed, would almost surely be held unconstitutional. It stretches my imagination to believe that sound thinking Members of this House would even propose it in its present form.

If H.R. 16785 passes as is, it will add more fuel to the fire in an already turbulent labor arena. Unions could and would use H.R. 16785 to disregard the no strike provisions in collective agreements. Further, even if union officers were against a local strike, "red hot" rank and file members could and would disregard their contractual no-strike pledge.

This bill disregards constitutional due process; puts unreasonable power and authority in the hands of inspectors, many of whom might be incompetent or easily influenced; gives only vague guidelines on what is expected although penal in nature; and gives ultimate penal authority to the Secretary of Labor without possibility of court review.

I think that everyone here is aware that most accidents result from unsafe acts by employees, not by unsafe equipment, and it would be unwise to try to legislate a product designed to make corrections for this fact.

And to permit an employee representative to inspect the plant to determine what is safe as far as equipment and working conditions would put undue burden on the employer.

The only way to achieve real improvement is through cooperative action involving employers and employees with assistance and guidance from government. Instead of providing the cooperative climate and assistance that are needed, H.R. 16785 would be a divisive influence that would achieve little, if any, safety improvement.

I am not opposed to sensible requirements for safety and health, but when a bill originates on the basis of safety and health and then goes on to give the Secretary of Labor almost unlimited regulatory power beyond these requirements, I become opposed.

I urge all my colleagues to vote against H.R. 16785. It is seriously lacking from the standpoint of fairness and due process, but is replete with provisions that are unjustly punitive, administratively unworkable, and potentially highly disruptive of labor-management relations.

Mr. Chairman, we need an occupational safety and health bill. But one that makes sense and not one that is forced upon us by the pressure and power politics of the AFL-CIO.

Mr. BROOMFIELD. Mr. Chairman, every year 14,000 workers are killed on the job and another 25 million suffer disabling injuries. In 1967, industrial accidents cost the economy \$7.3 billion with 10 times more man-days lost to injury than to strikes.

It should be clear that every American shares our concern for occupational safety and health, business as well as labor, Republican as well as Democrat; yes, we continue to discuss this technical failure in political terms. There is no room for partisanship where the health of a worker is concerned; there is only the self-evident need for an expert and professional authority to set health and safety standards for all American workers.

I have read both the Daniels and the Steiger bills carefully, and it seems that only the second can insure efficiency and professionalism without taking sides. The Steiger bill, H.R. 19200, does not view the problem of occupational safety and health in partisan terms, as a question of balancing the rights of business and labor. This is not to say that the element of fairness can be ignored, but merely that it must be secondary to our recognition of the technical nature of a problem shared by both business and labor.

The Steiger bill would permit standards to be set and enforced by experts, trained in a field where all considerations are objective and all solutions scientific. The individual working man would not be allowed to suffer while business and labor dicker over the relative shares of power. The measure proposed by the Subcommittee on Education and Labor, on the other hand, would encourage both sides to take each case of industrial accident as a battleground for furthering their own interests. This is exactly what we must avoid. It should be testimony to the worth of the Steiger bill that in guaranteeing efficient and objective action by scientific experts it necessarily inspires confidence in every segment of the American public.

Probably the most controversial aspect of the substitute bill is its call for a division of powers. Proponents of the Daniels' measure, which places all functions in the Office of the Secretary of Labor, argue that the checks and balances imposed by a separation are not necessary to insure fairness on the part of a single Government department. In their obsession with balancing rights of business and labor, I believe they have missed the whole point of this key article of the Steiger bill. The division of standard-setting, judicial, and enforcement functions, is not primarily designed to guarantee fair treatment, but rather to permit the efficient operation of all these functions. No element in this structure would be overburdened with extra duties; it is just an added help that none of these duties would conflict to the injury of one interest or another.

The Steiger bill places the authority to set standards in the National Occupational Safety and Health Board, appointed by the President solely on the basis of ability and experience in the field of occupational safety and health. This Board would have no other duties but to set standards. The Secretary of Labor would be authorized to conduct inspections, make recommendations to this Board, and enforce the orders of the Occupational Safety and Health Ap-

public Commission, which would arbitrate business-labor disagreements over violations. Each element of this structure, therefore, has specific and narrowly defined areas of responsibility; already composed of experts in their respective fields, they would only increase their efficiency and objectivity with experience.

The Daniels bill, on the other hand, places all responsibility on the Secretary of Labor. He would set standards through a time-consuming and complicated procedure involving *ad hoc* advisory committees. The progress could take as long as 2 years; and it would always take that long because for each new standard an entirely different and inexperienced *ad hoc* committee would have to be appointed. Further, the Secretary would enforce the standards, prosecuting violators before Labor Department hearing examiners. Finally, he would issue corrective orders along with assessing civil penalties. It is difficult for me to see how one man or even one department could handle the burden of duties assigned by the committee bill. Certainly, the Steiger substitute provides a much more realistic approach to the goal of efficiency and objectivity.

As for the actual process of setting standards, again the substitute bill is much simpler. It does not require *ad hoc* committees because it already has a permanent Board to examine the evidence and decide any controversy. The Board would use the formal procedures of the APA, so that a full hearing will be held with an opportunity to cross-examine.

In cases of grave dangers to workers from toxic substances or hazards resulting from new processes, the Board can issue temporary emergency standards which go into effect immediately upon publication in the Federal Register. Emergency standards in the Daniels bill are not effective until 30 days after publication in the Register.

Clearly, the emphasis of the Steiger bill is on the efficient operation of all three functions. But it also includes several provisions which insure fairer treatment than the Daniels bill would. First, the substitute measure permits judicial review of standards by the U.S. court of appeals. There is no such provision in the committee bill.

Second, the Steiger proposal asserts only that employers must provide conditions free from readily apparent dangers, not the vague statement of the committee that employers must furnish safe and healthful working conditions. The confusion that this general coverage will cause when applied to such complex and technical circumstances as those of an industrial plant cannot now be measured, but I am sure that it will prove quite substantial. Besides, a general standard like this only discourages the formulation of specific standards, which is, after all, the basic purpose of the bill.

Third, the substitute measure would authorize relief from situations of imminent danger only through injunctions issued by the district courts. The Daniels bill gives this power to a Labor Department inspector who unfortunately may choose to shut down a plant arbitrarily and may be influenced by business or union pressure. The court injunction provides relief just as quickly, but on the basis of fact not whim.

Fourth, the Steiger bill requires that both employer and employee representatives accompany an inspector; thus, if one is unable to participate in the inspection, the other cannot take unfair advantage of his absence.

I believe the subcommittee must be commended for including worthwhile provisions for training grants, research, State involvement, and safety for Federal jobs. But these are also contained in the substitute bill.

In closing, Mr. Chairman, I can only reiterate the necessity for scientific and objective approach to the technical problem of industrial accidents. When 75 out of every 100 teenagers now entering the work force can expect to suffer a disabling injury sometime in his working career, I believe it is time that we face the goal of occupational safety and health not as a matter for partisan politics, but as a challenge to the science and technology of our country. Many of the problems we face are a direct result of the innovations science has enabled us to make; there is no reason, Mr. Speaker, that this same scientific genius should not be applied to their solution.

Mr. SIKES. Mr. Chairman, the House is ready for consideration under the 5-minute rule of the Occupational Safety and Health bill. There is now before us the committee bill, H.R. 16785, and the Steiger-Sikes substitute, H.R. 19200. The sponsors of the committee bill have made it clear in the debate on today that they recognize the bill contains serious deficiencies and they are proposing a number of amendments which are intended to improve the bill. Undoubtedly, these amendments would improve the bill. The fact remains, however, that the substitute will be a much better bill than the improved committee bill. This I am sure will be brought out as the debate continues on tomorrow. Specifically, at that time I want to call attention to the fact that the amendments which are to be offered to the committee bill will fail in important areas to eliminate serious weaknesses which already have been pointed out in the committee bill. I list these in order.

H.R. 16785 vests all functions in the Secretary of Labor. It does not provide for a separate independent Occupational Safety and Health Board to set standards nor for an independent adjudicatory body to hear the cases of alleged violations developed by the Secretary of Labor.

The Daniels bill has an unrealistic set of criteria to which a standard must measure up. For example, standards must in effect guarantee that "no employee will suffer any impairment of health or functional capacity, or diminished life expectancy."

The Daniels bill contains no provision for judicial review of standards. Both the Steiger bill and the Senate-passed bill provide such review.

The Daniels bill requires that a representative of the employer and an authorized representative of the employees be given an opportunity to accompany an inspector on his inspection. This is too broad and inflexible a provision. The Steiger bill permits an employee-authorized representative to accompany an inspector on his rounds only where an employer exercises his option to accompany an inspector.

The Daniels bill would make it a crime—misdemeanor—for any person to give advance notice of a pending inspection. This is a particularly objectionable provision. It is aimed at Labor Department personnel, the very people upon whom Congress would rely so much to carry out the responsibilities under the bill; and by implication, this provision would make every employer, regardless of his record or good faith, a furtive wrongdoer who somehow must be caught in the act of violating safety and health standards.

In the State plan section, the Daniels bill requires a State to include in its plan a provision to the effect that the State will make all standards included in the plan applicable to all public employees of the State and its political subdivisions. The problem with this provision is that some States do not exercise control over all public employees working in the State; in some States the local governments control their own public employees. Therefore, both the Senate passed bill and the Steiger bill provide that to the extent permitted by its law, the State will establish an occupational safety and health program applicable to all employees in the State, which program is as effective as the standards contained in the plan.

H.R. 16785 dangerously extends the Federal Government's jurisdiction to State and local employees. We think this extension unwise and the matter is properly treated in the Steiger-Sikes substitute.

The CHAIRMAN. All time has expired. Pursuant to the rule, the Clerk will read the substitute committee amendment printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

(The text of the bill as reported appears at p. 893.)

Mr. STEIGER of Wisconsin (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

Mr. O'HARA. Mr. Chairman, reserving the right to object, I would like to inquire of the gentleman from Wisconsin if the amendment can be found by the Members in bill form, and is it identical to the language in the bill?

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. Mr. Chairman, it is found in bill form as H.R. 19299. It has been available, of course, to the Members. If the gentleman will yield further under his reservation, it is identical to the bill introduced previously.

Mr. O'HARA. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

Mr. DANIELS of New Jersey. Mr. Chairman, reserving the right to object, I would like to announce that, in connection with my remarks in the course of the debate today, I inserted with my remarks the text of all the proposed amendments I intend to offer tomorrow together with an explanation as to the effect of those amendments. I mention that so all Members of the House may have an opportunity tomorrow morning to look at the Congressional Record and acquaint themselves with the amendments I propose to offer.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. CHAMBERS. Mr. Chairman, I move that the Committee do now

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. Corman, chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 16785) to assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes, had come to no resolution thereon.

[From the Congressional Record—House, November 24, 1970]

OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. PERKINS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 16785) to assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 16785 with Mr. Corman in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on yesterday, the Clerk had read the first section of the committee amendment, ending on page 41, line 22. An amendment in the nature of a substitute offered by the gentleman from Wisconsin (Mr. Steiger) was pending.

The gentleman from Wisconsin is recognized for 5 minutes in support of his amendment.

(Mr. Steiger of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. STEIGER of Wisconsin. Mr. Chairman, this amendment in the nature of a substitute is offered on behalf of myself and the gentleman from Florida (Mr. Sikes). It is, as I indicated yesterday during general debate, the text of H.R. 19200 which under the rule is made in order.

I spent some time yesterday during general debate discussing in some detail provisions of this substitute.

We have heard much discussion of need, of the alleged strengths and weaknesses of both proposals.

Let me reiterate briefly. The substitute is a bipartisan measure. It was developed as a compromise between legislation originally proposed by the administration, H.R. 13373, and H.R. 16785. It was first offered in the Education and Labor Committee in the same bipartisan spirit it is being offered today.

The substitute has the same coverage as H.R. 16785. It establishes standards and provides for their enforcement. It provides an opportunity for State participation and deals with research, training, information, and education in a manner similar to H.R. 16785.

The differences are significant and important. H.R. 16785 centralizes all responsibility under the act in the Secretary of Labor. He establishes the standards, enforces them, presents alleged violations before his own hearing examiners, issues orders and assesses penalties.

The substitute separates these functions. Standards are set by an independent, professional health and safety board appointed by the President. The Secretary of Labor conducts the inspections and issues citations. Appeals of the Secretary's actions are made to an independent occupational safety and health appeals commission.

H.R. 16785 grants a great deal of power and authority to the individual inspector. It authorizes him to issue citations upon completion of his inspection and requires that such citations be posted. In addition, the inspector is given the power to shut down a plant or work site on his judgment alone that an imminent harm situation exists.

The substitute is drawn carefully to insure that the inspector is not given virtually limitless power and that citations are issued by the Secretary, not the inspector. The substitute assures due process because a Federal district court is the body given the power to issue a temporary restraining order. It also assures that employer and employees will have knowledge that the inspector feels an imminent danger situation exists, because he is required to inform both of his intention to seek a court ordered TRO.

There are other areas of H.R. 16785 in which due process is lacking—standards setting, use of proprietary standards developed on a basis other than the consensus method and the general duty provision. In standards setting there is no provision for judicial review; in proprietary standards, labor is not a party to their development in most instances; under the board general duty provision the Secretary of Labor is given the power to penalize without reference to specific standards.

These are the most significant differences between the two approaches.

Even with the amendments that the gentleman from New Jersey indicates he will offer, there is still some serious question. I think it is important for the members of the committee to recognize that the same you have before you will still be there even if the amendments offered by the gentleman from New Jersey discussed in his letter to the Members were to be adopted. The question of whether or not you will stick with the Daniels bill is important. Let us understand that the five or six amendments that the gentleman from New Jersey has indicated his willingness to offer still do not take care of all of the problems of H.R. 16785. Of course, the most obvious and most glaring defect is the failure to eliminate the monopolization of functions in the Secretary of Labor, but there is also a failure in terms of using emergency temporary standards. The Daniels bill language has three defects.

First, it would require a 30-day waiting period after publication of an emergency standard before it would be effective. This is inconsistent with the concept of emergency standards;

Second, emergency standards could be promulgated whenever a new hazard is discovered. By not limiting the emergency procedures to new hazards which result from new processes, there is a definite possibility that the emergency procedures could be used to undermine and circumvent the permanent standard setting procedures; and

Third, the possibility of circumventing permanent standard-setting procedures becomes more important in light of the third defect with is that while formal APA hearings must be commenced—in accord with the permanent standard-setting procedures—within 6 months of the publication of the emergency standards, there is no guarantee that a permanent standard will ever be promulgated to replace the temporary emergency standard which was promulgated without any hearing.

The Daniels bill has unnecessarily complicated provisions concerning the issuance of citations. The bill sponsored by the committee would make it a crime, a misdemeanor, for any person to give advance notice of a pending inspection. This is aimed at the Department of Labor personnel, the very people upon whom Congress would rely so much to carry out the responsibilities under the bill; and by implication, this provision would make every employer, regardless of his record or good faith, a furtive wrongdoer, who must somehow be caught in the act of violating the safety and health standards.

One other aspect which is very important is that in the State plans section of the committee bill there is a requirement that the State must include a provision to the effect that the State will make all standards included in the plan applicable to all public employees of the State and its political subdivisions. The problem with this provision is that some States do not exercise control over all public employees working in the State. In some States the local governments control their own public employees.

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

(By unanimous consent, Mr. Steiger of Wisconsin was allowed to proceed for 3 additional minutes.)

Mr. STEIGER of Wisconsin. Therefore, both in the bill passed by the other body and the substitute bill before us the provision is in there that to the extent permitted by its law the State will establish an occupational safety and health program to be applicable to all of the employees of that State.

Mr. Chairman, I want to make very clear to the members of the committee that in my judgment, even if the six amendments that are to be offered by the gentleman from New Jersey in his attempt now apparently to recognize the deficiencies contained in the original Daniels bill and to recognize the opposition that has been developing across the country to the committee bill as written, in this attempt to modify it at the last minute, we are apparently witnessing one more example of the unwillingness or inability of the Committee on Education and Labor to reach an agreement before a bill comes to the floor and will be forced to attempt to make a compromise on the floor in an effort to try and sustain their position.

Mr. Chairman, it is tragic that there has been so much time lost, that there has been so much time wasted without any effort to agree on a legitimate compromise. The amendments, however well intended, are still imperfect, even if offered, because they do not solve the basic problem of the committee reported bill. So, the issue will remain the same. Will we take that bill which has been brought here by the Committee on Education and Labor or take the bipartisan compromise offered by the gentleman from Florida and myself, which has the

support of the administration, and which in my opinion provides a fair plan for due process and which has equal coverage of the Daniels bill, but which at the same time assures an effective and equitable program for the working men and women of this country and to those by whom they are employed.

Mr. Chairman, I trust the substitute will be adopted.

AMENDMENT OFFERED BY MR. RAILSBACK TO THE SUBSTITUTE AMENDMENT
OFFERED BY MR. STEIGER OF WISCONSIN

MR. RAILSBACK. Mr. Chairman, I offer an amendment to the substitute amendment offered by the gentleman from Wisconsin (Mr. Steiger).

The Clerk read as follows:

Amendment offered by Mr. Railsback to the amendment in the nature of a substitute offered by Mr. Steiger of Wisconsin:

On page 44, line 22, in section 181(c)(2), following the comma, add the following: "and which standards, when applicable to products which are manufactured or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce."

(Mr. Railsback asked and was given permission to revise and extend his remarks.)

MR. RAILSBACK. Mr. Chairman, this amendment is identical to language which was adopted on the Senate floor and is contained in the Senate-passed bill.

The amendment was offered in the other body by Senator Saxbe and it was acceptable to the Senate committee and Senator Williams of New Jersey.

It has been brought to the attention of the leadership on both sides of the aisle. It is my understanding that it is acceptable to the sponsor of the primary pending amendment.

Mr. Chairman, this amendment applies only to products moved in interstate commerce and says simply that where there is a Federal standard dealing with such product a State must show compelling local conditions to justify deviation from such a national standard and must not unduly burden interstate commerce. This amendment, if adopted, would protect a product manufacturer of products moving in interstate commerce from having to custom build a product to meet the various requirements of the several States in the absence of unusual conditions.

The amendment permits the States to have differing standards regarding those products, but it requires that there be a sufficient showing of compelling local conditions and circumstances.

MR. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield?

MR. RAILSBACK. I will be glad to yield to the gentleman from Wisconsin.

MR. STEIGER of Wisconsin. Mr. Chairman, I certainly wish to commend the gentleman in the well for the work that he has done. May I ask the gentleman if I am correct that this amendment is identical with that offered in the other body?

MR. RAILSBACK. Yes; it is.

MR. STEIGER of Wisconsin. We have no objection to the amendment. I have discussed the matter with the gentleman from Florida (Mr. Sikes) and I will accept the amendment.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. RAILSBACK. I yield to the gentleman from Kentucky.

Mr. PERKINS. Mr. Chairman, let me state that in the event the committee bill prevails over the substitute, that it is the intention on this side of the aisle to accept the gentleman's amendment to the committee bill when we reach that point.

Mr. RAILSBACK. Mr. Chairman, I appreciate that statement very much.

The **CHAIRMAN.** The question is on the amendment offered by the gentleman from Illinois (Mr. Railsback) to the amendment in the nature of a substitute offered by the gentleman from Wisconsin (Mr. Steiger).

The amendment to the amendment in the nature of a substitute was agreed to.

Mr. SIKES. Mr. Chairman, I move to strike the last word.

(Mr. Sikes asked and was given permission to revise and extend his remarks.)

(By unanimous consent, Mr. Sikes was allowed to proceed for 5 additional minutes.)

Mr. SIKES. Mr. Chairman, most of us are agreed that it is time for greater concern about the safety and health of those employed in industry in America. The toll of deaths and injuries from industrial accidents, from illnesses, or from other health hazards is mounting year by year. It will come as a surprise that these result in the loss of many more days of work each year than are caused by strikes.

Obviously the economic impact of industrial deaths and disabilities is very great. Staggering amounts are wasted in lost wages. Resources which could be available for productive use is siphoned off to pay workmen's compensation benefits and medical expenses. In the field of occupational health the view is particularly bleak. In addition to the health hazards of other years, we find that technological advances and new processes have brought numerous new hazards to industrial plants. The picture is worsening in every field all over America.

I am not one who believes that we should inject the Federal Government into any area of activity without serious thought to all the effects. However, we are talking about a field where corrective legislation or constructive steps generally have been left in the hands of the States. We find that State regulation is not solving the problem, and it is growing. Only a few States have modern laws. Not many have developed adequate resources for the administration and enforcement of corrective measures.

The same is true of employers. Some employers have demonstrated an outstanding degree of concern for the health and safety of their employees. However, many employers, particularly smaller ones, simply cannot make the necessary investment in health and safety and survive competitively unless all are required to do so. Thus, competitively, the conscientious employer is at a disadvantage. The Congress already has enacted safety programs for a few of the more hazardous occupations. The plight of other workers is just as important and encompasses a much broader group. In fact, it is increasingly clear that the hazards which characterize modern industry are not the problem of a single employer, a single industry, or a single State. The health and safety of the worker are a national concern. As a result, both Presi-

don't Johnson and President Nixon have urged enactment of a comprehensive program to meet the total range of occupational safety and health requirements.

In consequence of this widening acceptance of the serious nature of the problem, the House has before it today H.R. 16785 from the Committee on Education and Labor. This, however, is not a bill which I support. It is my belief that the committee bill could, in fact, bring about conditions which are chaotic rather than corrective. Instead, I support H.R. 19260, a substitute bill of which I am a cosponsor. And I pay high compliment to my good friend, the distinguished gentleman from Wisconsin, William Steiger, who is the senior sponsor of the bill.

The substitute represents a bipartisan effort to pass a fair, equitable, effective, health and safety bill. It was drafted in consultation with members of both parties and with individuals representing both labor and management, as well as the administration. I do not think this can be said of the committee bill. The substitute seeks to provide a balanced administrative structure for mobilizing a sound national program and enlisting the best efforts of both employer and employee toward safe and healthful working conditions.

Serious objections have been voiced to the committee bill. They come from many of those who will be affected by it. Primarily we feel that it will vest too much power in Washington. The enormous amount of power given to the Secretary of Labor by the committee bill could easily be abused, actually bringing about a breakdown in relations between Government and those in labor and management with whom it deals. For instance, the Secretary of Labor could arbitrarily take action to shut down a plant when he considers that an imminent danger exists. This could create an extremely coercive situation. The substitute bill places this function in U.S. district courts, where such action could be considered more calmly. This would not result in delays, since action could speedily be obtained under injunctive processes.

I have also been quite concerned with the power vested in the inspection system to be established in the committee bill under the Secretary of Labor. It should be obvious that, under the committee bill, one man could arbitrarily shut down a plant on his own finding of imminent danger without consulting with anyone or giving any warning or determining the effect it would have. This would invite abuses. It could produce effects which are disastrous both to employees and employers. The order for the closing down of a plant can last for only 72 hours, but there are many industries and many businesses in this country which can be substantially ruined by an arbitrary and unannounced 72-hour shutdown. We have human families in all walks of life. This includes inspectors who would be employed in this program. I admit that going to the courts, as the substitute bill would require, is a far better procedure for obtaining corrective steps than obstructive summary action would be.

As far as I can determine, there are no checks and safeguards placed on the power of the Secretary. The committee bill gives him full authority in areas of standard setting, investigation, adjudication, and prosecution. This could result in a dangerous situation.

We propose that the program be administered by a board which is directly concerned with the problems of health and safety in industry. We believe this is highly preferable to vesting all functions in the Secretary of Labor in a centralized Washington operation. The Labor Department is already filled with many differing, diverse problems. An independent board consisting of five members giving full consideration to this many faceted problem can best establish health and safety standards for the many types of industry and business which exist in this country. Such a board will have the benefit of support and cooperation from the agencies of Government, such as HEW and the National Institutes of Health, which can help to determine what are reasonable and prudent standards for the working people of America.

Government, labor, and management should have an equal stake in improving safety conditions. In the committee bill, the employer has a very minor role in the pursuit of better working conditions. The passage of legislation does not automatically improve working conditions. We should pass legislation to insure that employers and employees alike have an interest in improving these conditions. Harmony and cooperation can best be obtained under the substitute bill.

This is a new program. It will have to try its wings. The substitute bill gives flexibility in its application. This is needed in a new program. We think a bill which does not mandate cumbersome standards-setting processes would be more effective by virtue of being more acceptable both to labor and management and will create far fewer problems.

The committee bill does not spell out guidelines on safety and health standards and we consider this an invitation to bureaucratic meddling which can produce untold problems in the operation of the bill.

Remember, the committee bill gives the inspectors dictatorial powers which in the wrong hands could work against a successful and effective program. In other words, we seek to avoid an unworkable bill or one which creates unreasonable problems. We want the program to succeed. We encourage the development and use of State plans and a realistic acceptance of programs best adapted to the individual States and to local communities. This in itself is of considerable importance.

We do not consider the substitute bill to be slanted toward any particular group, but that it will encourage cooperation between labor and management and Government to achieve a realistic and useful program which actually does save life and limb.

The sponsors of the committee bill made it clear in yesterday's debate that they recognize the bill contains serious deficiencies and they are proposing a number of amendments which are intended to improve the bill. Undoubtedly, these amendments would improve the bill. The fact remains, however, that the substitute will be a much better bill than the amended committee bill. The amendments which are to be offered to the committee bill will fail in important areas to eliminate serious weaknesses which already have been pointed out in the committee bill. Obviously the thing to do is to accept the substitute.

Mr. PERKINS. Mr. Chairman, will the gentleman yield?

Mr. SIKES. I yield briefly to the distinguished chairman of the committee.

MR. PERKINS. Let me say to my distinguished colleague, we have passed that point because when the substitute is voted down, we intend to offer an amendment so that no plant can be closed down unless you go into the district court.

MR. SIKES. My distinguished friend, for whom I have the highest regard, obviously realizes there is a need to correct this bill in many instances. This I have just pointed out. Amendments will not be necessary if the substitute is approved. The weaknesses, which are manifest, can be taken care of through this simple procedure. The gentleman proposes to improve the committee bill—and it needs it. Let us accept the substitute. It is a good bill, one that does not have to be rewritten by amendments.

MR. PERKINS. Mr. Chairman, I ask unanimous consent that all debate on the substitute amendment and all amendments thereto close at 2:15 p.m.

THE CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

PARLIAMENTARY INQUIRY

MR. STEIGER of Wisconsin. Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN. The gentleman will state his parliamentary inquiry.

MR. STEIGER of Wisconsin. Am I correct in understanding that the unanimous-consent request of the gentleman from Kentucky was to end debate on the amendment in the nature of a substitute, H.R. 19200, and any amendments thereto at 2:15 p.m.?

MR. PERKINS. That is correct, only on the substitute. We hope that the committee bill will prevail, and that we will then proceed to the amendment process on the committee bill.

MR. GERALD R. FORD. Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN. The gentleman will state it.

MR. GERALD R. FORD. As I understand the rule and the procedure, amendments can be offered to the committee bill at the present time; is that correct?

MR. PERKINS. I do not so understand.

MR. GERALD R. FORD. I should appropriately like to address the inquiry to the Chair: Between now and 2:15 may amendments be offered to the committee bill?

THE CHAIRMAN. Amendments may be offered to the substitute until 2:15. All debate on the substitute and any amendments to the substitute will be terminated at that time.

MR. GERALD R. FORD. Mr. Chairman, with appropriate deference to the Chairman's response, I do not think there was an answer to my inquiry.

THE CHAIRMAN. The gentleman asked what would happen after that time if the substitute does not prevail? It would be the ruling of the Chair that it would be in order to offer amendments to the original committee amendment.

MR. PERKINS. Mr. Chairman, I wish to make another unanimous-consent request—

MR. GERALD R. FORD. Mr. Chairman, may I more specifically define my parliamentary inquiry? Is the Chair ruling that there can be no amendments offered between now and 2:15 to the committee bill?

THE CHAIRMAN. Only to that portion of the committee bill which has been read.

Mr. GERALD R. FORD. Which is the enacting clause?

The CHAIRMAN. That is correct.

Mr. PERKINS. Mr. Chairman, I wish to modify the unanimous-consent request previously made to reserve to the committee the last 5 minutes of debate.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky?

Mr. ARENDS. Reserving the right to object, what was the request?

The CHAIRMAN. The request was to reserve the last 5 minutes of time, which would be from 2:10 to 2:15, for the committee.

Mr. ARENDS. Further reserving the right to object, may I ask why it takes 45 minutes of time? Are there that many speakers?

Mr. PERKINS. If the gentleman will yield, I wanted to be reasonable. I assume the gentleman has some speakers on his side. I know we have several speakers on this side. I felt 2:15 would be reasonable to have as time to debate the substitute and amendments thereto.

Mr. STEIGER of Wisconsin. Mr. Chairman, reserving the right to object, will the gentleman amend that request to provide that the gentleman from Wisconsin will be recognized for 5 minutes and then the committee will be recognized for 5 minutes prior to the termination of the time?

Mr. PERKINS. I accept that.

The CHAIRMAN. The pending request is that there will be 5 minutes reserved for the propounders of the substitute and then 5 minutes for the committee immediately prior to the termination of the time. Is there objection to that request?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. Scherle).

(By unanimous consent, Mr. Scherle yielded his time to Mr. Steiger of Wisconsin.)

The CHAIRMAN. The Chair recognizes the gentleman from Louisiana (Mr. Waggonner.)

(Mr. WAGGONNER asked and was given permission to revise and extend his remarks.)

Mr. WAGGONNER. Mr. Chairman, I would like to take this time to ask a question or two of the authors of the bill. On page 64, subsection (c) says:

(c) If the Secretary arbitrarily or capriciously issues or fails to issue an order under subsection (a) and any person is injured thereby either physically or financially by reason of such order or failure to issue such order, such person may bring an action against the United States in the Court of Claims in which he may recover the damages he has sustained, including reasonable court costs and attorneys' fees.

Going back to the definition of a person, is the right provided for here available only to employees, or is it possible that employers would fall into this category as well?

Mr. DANIELS of New Jersey. Mr. Chairman, will the gentleman yield?

Mr. WAGGONNER. I yield to my friend, the gentleman from New Jersey.

Mr. DANIELS of New Jersey. Mr. Chairman, yesterday in the course of the debate, I stated that I will propose today, in the event that the substitute is defeated, an amendment repealing this section of the bill.

The section the gentleman read applies to imminent danger which would give inspectors the right where they deem that a danger is imminent to act administratively.

MR. WAGGONNER. Mr. Chairman, I think I understand what the gentleman is saying, but I believe he misses the point. As the language is drawn, if it is not stricken, would only employees be able to claim damages?

MR. DANIELS of New Jersey. No; the employers would also as well be able to collect damages.

MR. WAGGONNER. The employers would as well.

All right, then going back to the inspection section, we have a definition of the word "Secretary." This language is rather tightly drawn. Is it possible that, when we talk about inspections, when we use only the word "Secretary," that employees of the Secretary could not conduct inspections?

MR. PERKINS. Let me say to my distinguished friend that the word "Secretary" means his agents as well. We do not expect the Secretary himself to conduct inspections. His agents will conduct the investigations.

MR. WAGGONNER. Does the gentleman feel we need an additional amendment to the definition of the word "Secretary"?

THE CHAIRMAN. The time of the gentleman from Louisiana has expired.

(By unanimous consent, Mr. Gross yielded his time to Mr. Waggonner.)

MR. WAGGONNER. I refer the gentleman to the definition section, section 3(1):

The term "Secretary" means the Secretary of Labor.

It does not say anything about his agents.

MR. PERKINS. The legislation contemplates that the Secretary's agents will perform the inspections.

MR. WAGGONNER. I beg to disagree.

MR. PERKINS. That the Secretary may delegate his functions is clear.

MR. WAGGONNER. I beg to disagree. When we talk about inspections we use only the word "Secretary."

MR. PERKINS. It is provided in existing law that the Secretary may delegate functions.

MR. WAGGONNER. Again I refer to the inspection section, page 57, section 9(a):

In order to carry out the purposes of this act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

To do certain things. It does not say anything about agents of the Secretary, and there is only one Secretary.

MR. PERKINS. Mr. Chairman, will the gentleman yield further?

MR. WAGGONNER. I am happy to yield further.

MR. PERKINS. May I quote language from the Reorganization Plan No. 6:

The Secretary of Labor may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee of the Department of Labor of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.

Mr. WAGGONER. None of the proposed amendments would affect that authority?

Mr. PERKINS. None of the amendments would affect that authority.

Mr. WAGGONER. The proposed amendments.

Mr. PERKINS. That is correct.

Mr. WAGGONER. I thank the gentleman for yielding.

The CHAIRMAN. The Chair would like to inquire whether any Member on the list has an amendment to offer to the substitute amendment?

The Chair recognizes the gentleman from Maine (Mr. Hathaway).

AMENDMENT OFFERED BY MR. HATHAWAY TO THE SUBSTITUTE AMENDMENT
OFFERED BY MR. STEIGER OF WISCONSIN

Mr. HATHAWAY. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute offered by the gentleman from Wisconsin.

The Clerk read as follows:

Amendment offered by Mr. Hathaway to the amendment in the nature of a substitute offered by Mr. Steiger of Wisconsin:

On page 48, between lines 4 and 5, insert the following:

"(h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this act, whichever is earlier."

Mr. HATHAWAY. Mr. Chairman, this amendment, which would be put in the section of the substitute pertaining to the States making application to enforce their own occupational health and safety laws. In view of the fact that there may be an hiatus between the effective date of the Federal standard and the time when the Secretary will actually be geared up to enforce that standard, I believe it would be advisable in that interim period, which from past experience may take up to 2 years, to allow the States to continue to enforce their own standards with respect to the area covered by the Federal standards.

That is the only purpose of this amendment. This amendment was offered in another form and accepted in the other body. I believe it is a worthwhile amendment.

Mr. STEIGER of Wisconsin. Mr. Chairman, will be the gentleman yield?

Mr. HATHAWAY. I yield to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. I appreciate the gentleman from Maine yielding.

This amendment, may I ask the gentleman, is not identical to that offered in the other body to the Senate passed bill?

Mr. HATHAWAY. That is correct; it is not identical.

Mr. STEIGER of Wisconsin. Would the gentleman be willing to briefly say what are the differences between the two?

Mr. HATHAWAY. The amendment which was offered in the other body was restricted to standards that are not in conflict with the Federal standard, and it said that a State standard which was stronger than the Federal standard would not be in conflict. But this restricts the field of application beyond that which I believe the Secretary would like to have and would need to have.

If, for example, you had a Federal standard that said workbenches should be 3 feet apart and if there were a State standard that said they should be 2½ feet apart, then under the Senate amendment that was approved and agreed to, the State standard could not be effective, because it would be in conflict. The Secretary may say "We had better have a 2½ foot standard at least until the 3-foot standard is ready to be enforced." That is why I deleted that language from the Senate amendment.

Mr. STEIGER of Wisconsin. I appreciate that explanation. I discussed this with the gentleman from Florida, and we both concur that the amendment does make sense, and we would accept it.

Mr. HATHAWAY. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maine to the amendment in the nature of a substitute offered by the gentleman from Wisconsin.

The amendment to the amendment in the nature of a substitute was agreed to.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. Erlenborn).

Mr. ERLBORN asked and was given permission to revise and extend his remarks.)

Mr. ERLBORN. Mr. Chairman, I rise in support of the Steiger-Sikes substitute.

As I explained in more detail yesterday, I think it will provide a better law for the health and safety of the working men and women of this country.

One of the principal differences that remain between the Steiger-Sikes substitute and the committee bill as proposed to be amended by the gentleman from New Jersey and the chairman of the committee, the gentleman from Kentucky, is the question of standard setting. I think this is a crucial difference.

As I pointed out before, the committee bill would in effect make the Secretary of Labor legislator, policeman, judge, and jury. It would put the Secretary of Labor, I think, in the wrong position. It is not good organization to have standard setting and enforcement and determination of violation of standards all resting with the same men. The Steiger-Sikes substitute separates these powers, as is traditionally done, by having a separate body establish the standards and utilize the consent standards and already existing Federal standards to implement the law in a way that I think would be particularly helpful in getting standards set and in operation early.

I feel that the Steiger-Sikes substitute will in effect give us more of what we want with this bill: that is, protection for the working man and woman. I hope that it will be supported by a majority of the members of the Committee of the Whole.

The CHAIRMAN. The Chair recognizes the gentleman from Indiana (Mr. Myers).

(By unanimous consent, Mr. Myers yielded his time to Mr. Steiger of Wisconsin.)

The CHAIRMAN. The Chair recognizes the gentleman from Texas (Mr. Eckhardt).

(Mr. Eckhardt asked and was given permission to revise and extend his remarks.)

Mr. ECKHARDT. Mr. Chairman, there is one thing that concerns me about this matter. I think I understand it correctly, but I should like to ask some member of the committee to answer a question on the point.

There has been much said about the question of the division of powers—the judicial power, the legislative power, and the executive power.

Now, as I understand the committee's bill, the committee's bill would require, in order for any matter to ultimately be enforced, some type of judicial review particularly in view of the amendments that the gentleman from New Jersey (Mr. Daniels) proposes to offer. In other words, no one could be compelled to do anything unless the court directed him to do so.

But as I understand the amendment, the substitute, it would mix an administrative power and court review.

Now, ordinarily, when I go into court I am attempting to get a determination of the issues involved based upon the facts that arose, but as I understand the Steiger amendment, the court would first have an opportunity to review the validity of the rule as an abstract proposition and then would be permitted to decide the question in controversy?

Mr. DANIELS of New Jersey. Mr. Chairman, if the gentleman will yield, the gentleman has placed his finger upon it correctly.

Mr. ECKHARDT. I am very much opposed to that mixing of judicial authority with rulemaking authority in the courts, and therefore I oppose the Steiger substitute.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. Anderson).

(Mr. Anderson of Illinois asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON of Illinois. Mr. Chairman, I rise in support of H.R. 19200, the Steiger-Sikes substitute job safety bill. I am proud to support this substitute bill because it represents a truly bipartisan compromise effort. It incorporates the best features of both the Daniels bill and the original administration bill into a truly equitable and effective occupational health and safety program. It places safety for the worker and fairness for the employer above narrow partisan politics. And I think everyone here today would agree with me that the health and safety of 80 million American workers must be our overriding concern and that we must be willing to rise above politics to provide the best possible legislation.

I listened carefully yesterday as the distinguished chairman of the Education and Labor Committee denied that the Daniels bill was too harsh and proclaimed that it was vastly superior to the substitute bill. And I listened further as he then turned around and expressed a willingness to introduce five substantive amendments which are nearly identical to certain provisions of the substitute bill. I cannot say that this constitutes an admission that the Daniels bill may be too harsh and that the substitute may have considerable merit. Whatever the chairman's reasons may be, I for one would certainly welcome this belated compromise gesture. I can only wish that this magnanimous spirit of compromise had been more in evidence during the committee's deliberations since no one enjoys having to rewrite entire bills on the floor of the House. But when good intentions do not manifest themselves in good legislation, we are left with no alternative.

And so, while I think the chairman is beginning to move in the right direction with his compromise amendments, he has still failed to come to grips with some of the major structural defects of the committee bill and for that reason I think it is imperative that we adopt the substitute bill.

The major structural defect of the committee bill, which is not touched upon in the chairman's compromise amendments, is the concentration of all power in the Secretary of Labor. Under the committee bill, the Secretary is authorized to promulgate, monitor, and enforce the occupational safety and health standards. Now I am aware that during the course of the debate yesterday, the Federal regulatory agencies were cited as ample precedent for such a concentration of powers. But let me remind my colleagues that one of the major reasons these commissions are under heavy attack today is because they have been unable to fulfill the oftentimes conflicting responsibilities of serving as prosecutor, judge, and jury all rolled into one. And yet this is exactly what we are asking of the Secretary of Labor under the committee bill. And I might add that the current Secretary of Labor, Mr. Hodgson, fully recognizes this potential problem and has consequently endorsed the substitute measure. In his letter to Congressman Steiger he said, and I quote:

I firmly believe that H R. 19200 is a strong comprehensive measure which includes fair, effective procedures for promulgating and enforcing occupational safety and health standards. My endorsement of H R. 19200 is in the spirit of compromise, and a desire to see effective occupational safety and health legislation enacted this year.

The substitute bill offers a much more reasonable, responsible and realistic approach to an occupational safety and health program than does the committee bill. It would establish a full time board of professional safety experts to set the standards and a special appeals commission to adjudicate alleged violations. And I cannot overemphasize the importance of having a nonpartisan professional board to promulgate these standards, for this would remove the possibility of subjecting this process to political pressures from business and labor interests. By the same token, the three man Appeals Commission would be above these pressures in adjudicating alleged violations. Through these two structural devices, the committee bill is best designed to insure both professional safety standards and strong and equitable enforcement. If I were to choose two words to describe in what ways the substitute bill is superior to the committee bill, I would choose the words, "professionalism" and "fairness." These are the major strengths of the substitute bill and these are the reasons that I am strongly urging its adoption.

THE CHAIRMAN: The Chair recognizes the gentleman from Florida (Mr. Sikes).

(Mr. Sikes asked and was given permission to revise and extend his remarks.)

MR. SIKES: Mr. Chairman, I think that it has been very clearly demonstrated that in the substitute we have a bill which is workable, a bill which was carefully drawn, a bill which was drawn in consultation with employers and employees, after conferences with both sides of the aisle in the Congress, and with the concurrence and assistance of the administration.

We have a bill that is ready to be put into operation. It has been made clear that no serious deficiencies exist in the substitute. Thus, extensive amendments are not required. That is not true of the committee bill. In one instance after another, committee members themselves have admitted weaknesses in the bill and have proposed that they will offer amendments to correct those weaknesses which are contained in the committee bill.

Mr. Chairman, it should not be necessary to take these steps. We should not have to rewrite this legislation on the floor of the House. By the simple expedient of accepting the substitute we can eliminate that necessity, eliminate the dangers that go with that process and have a good workable bill which will in fact mark a great step forward in assuring better and safer and healthier working conditions for American employees.

Mr. Chairman, I urge the adoption of the substitute.

The CHAIRMAN. The Chair recognizes the gentleman from New Jersey (Mr. Daniels).

(Mr. Daniels of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. DANIELS of New Jersey. Mr. Chairman, the need for an occupational safety and health bill is clear. What we do not need is just any bill—we need an effective bill.

I say to you that the committee bill is better and more effective than the Steiger substitute. The committee bill is fair, it is sound, and it is a good bill.

In order to make every concession to alleviate the fears and to correct the misstatements that have been expressed, I shall propose amendments to the committee bill that, while not interfering with its effectiveness, will reduce areas of concern that have been expressed. The committee bill with these amendments will still be more effective and superior to the Steiger substitute.

What do these amendments do?

First, they modify the employer's obligation to provide a safe and healthful place of employment—the so-called general duty. This obligation is made more limited and there is no penalty for violating the general duty unless, of course, the employer fails to correct a violation after it is pointed out to him.

Second, in imminent danger situations, the Secretary will now be required to get judicial relief. We have eliminated the provision under which a plant could be closed by an administrative order.

Third, we have deleted a provision which was—though inaccurately—called a “strike with pay” provision, and have provided that employees may request an inspection when they are subjected to dangers at the workplace.

Fourth, we have revised the monitoring provisions both to simplify them and to make them a part of the standards-setting process.

We have amended the Construction Safety Act so that its standards-setting procedures become applicable to the entire construction industry rather than as at present which is to contractors performing Federal or federally assisted work.

Finally, we shall offer an amendment providing for a three-man appeals commission to review issues on contested citations.

I announced on the House floor yesterday during the course of the debate that I would place in the Congressional Record the amendments I would offer. I wish to bring to your attention that these amendments appear in the Record of Monday, November 23, on pages H10625, H10626, and H10627.

I urge the defeat of the Steiger substitute.

THE CHAIRMAN. The Chair recognizes the gentleman from Michigan, Mr. O'Hara.

Mr. O'Hara asked and was given permission to revise and extend his remarks.)

Mr. O'HARA. Mr. Chairman, let me call your attention to a letter that the Members should have received from the gentleman from New Jersey (Mr. Daniels), who is the sponsor of the bill before us.

If you did not see a copy of the Daniels letter, then there are additional copies of the letter at the committee table, and I hope you will pick one up. It explains some of the changes that the gentleman from New Jersey is willing to make in the committee bill in an effort to arrive at an agreement on the committee bill.

Mr. EDMONDSON. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from Oklahoma.

Mr. EDMONDSON. Mr. Chairman, I would ask the gentleman: if these are the amendments referred to in the letter which the chairman of the committee indicated yesterday in his remarks he intended to support?

Mr. O'HARA. That is correct.

The chairman of the committee will support the changes that the gentleman from New Jersey (Mr. Daniels) will propose to his own bill if the substitute is defeated and an opportunity is had to amend the committee bill.

Mr. EDMONDSON. Mr. Chairman, I thank the gentleman.

Mr. O'HARA. Mr. Chairman, let me simply conclude by saying this: After the adoption of the amendments that the gentleman from New Jersey (Mr. Daniels) will propose if the substitute is defeated, there will be one important substantial difference between the substitute and the committee bill, and that difference will have to do with the manner in which the standards under the act are determined and promulgated.

The substitute proposes that this be done by a committee—a committee that will not be known to the public and whose members will not be responsible to the public. A committee of people who cannot be held accountable by the Congress for what they do or fail to do.

The committee bill on the other hand proposes to use the standard rulemaking provisions of the Administrative Procedures Act. Under the committee bill, all rules and regulations will be promulgated just as are all other rules and regulations under the Administrative Procedures Act, by the Secretary of Labor, an accountable, identifiable, and responsible public official.

I ask that the substitute amendment be defeated.

THE CHAIRMAN. The Chair recognizes the gentleman from Wisconsin (Mr. Steiger).

(Mr. Steiger of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. STEIGER of Wisconsin. Mr. Chairman, may I first of all say I am somewhat surprised at the speed with which all of this has been done. I trust that that is an indication of the willingness of the House to accept the substitute put forward by the gentleman from Florida and myself.

The gentleman from Michigan, as has the gentleman from New Jersey before me, attempted to try to portray the substitute as being ineffective to a point—but only to a point, you will notice, because of course they are going to offer amendments if the substitute is defeated which would, in fact, bring the Daniels bill almost in line with the Steiger-Sikes substitute.

What we are saying, as I tried to indicate earlier in my remarks, not only in general debate yesterday, but also today, is that there is a feeling apparently that we had better try to modify what we recognize is a deficient bill.

The whole point I would make to the committee is that they have had their chance. As a matter of fact, the substitute came about because of the distinguished chairman of the Committee on Education and Labor.

Yet, when we tried to reach a compromise, which is the Steiger-Sikes substitute which you have before you today, it did not pass. It did not succeed. It was defeated in committee by a vote of 19 to 15. Therefore, the gentleman from Florida and I had to bring it here to the House floor.

I would have preferred to try to find a way to reach an agreement that is acceptable as with the manpower bill. That was a good bill.

But this bill got hung up, in part, because of, I submit, the rays of heat that have been generated more than the light that has been generated perhaps by both sides who are supporting one or the other of the bills.

But let us understand more—if the substitute is defeated—as I hope it will not be—even if the amendments offered by the gentleman from New Jersey are passed, you still do not have a perfect bill. You still have a bill that monopolizes the functions. You still have a bill that is defective in terms of emergency standards and how those will be handled. You still have a bill that is defective because it requires the State and local employee within the State to be covered by the health and safety standards. Some States are not going to be able to have any safety plans under this bill.

There are substantive differences. My friend, the gentleman from Florida, has pointed to other areas of disagreement—the unrealistic criteria for the standards and the punitive nature of the penalty for advance notice, for example.

All that is by way of saying, I think the issue ought to be one thing and one thing alone—can we take a bipartisan compromise or substitute as offered by the gentleman from Florida and myself and pass it as the will of this House? Or are we going to be faced again with an attempt to correct the deficiencies of the bill proposed by the Committee on Education and Labor?

I trust that the action of the House today will be to adopt the substitute and not to vote it down so that we can then pass a bill and take it to conference and get the bill back in this session of the Congress that is strong, effective, enforceable, and that can be supported by both parties and the administration.

I hope the vote will be "aye" in favor of the substitute.

The CHAIRMAN. The Chair recognizes the gentleman from Kentucky (Mr. Perkins) for 5 minutes.

Mr. PERKINS. Mr. Chairman, in response to the distinguished gentleman from Wisconsin, I should like to make clear that Federal standard is promulgated under the committee bill would not cover Federal and State employees, as has been stated by the gentleman.

Mr. STEIGER of Wisconsin. Mr. Chairman, will the gentleman yield? The point I made is that it requires State plans for coverage of State and local governmental unit employees.

In my judgment, the committee bill is far superior to the substitute bill. Why should we turn back the clock and utilize outmoded methods for promulgating standards? The President of the United States in other legislation has even suggested that we should place such authority in an established agency instead of an independent commission. We voted on similar questions during consideration of the Railway Labor Act this year and also on the Coal Mine Safety Act. May I state again if the committee bill prevails over the substitute an amendment will be offered so that an inspector will not have the right to close down any plant. Under our proposal the Secretary of Labor would have to go into the district court and prove a case of imminent danger.

So I say to you that the committee bill is reasonable. It is superior to the substitute. It will provide for immediate action in these all-important areas. The provisions of the committee bill will go into operation immediately, whereas if we try to establish a number of independent commissions, the effort will drag on for several years before we provide employees in hazardous industries with adequate protection.

With the amendments the gentleman from New Jersey will offer the only real difference between the committee bill and the substitute bill relates to the establishment of standards. It is the committee position that such authority should rest in the Secretary of Labor. As the gentleman from New Jersey stated, under the committee bill, in every instance where standards are promulgated, all parties affected will be notified. In the committee bill an advisory committee will advise the Secretary and every affected individual will have his day in court.

As the gentleman from New Jersey has also indicated, if the substitute bill is voted down, an amendment will be offered with respect to the enforcement provisions. It will be the same as language adopted in the Senate to provide for the establishment of a presidentially appointed Occupational Safety and Health Review Commission.

Persons aggrieved by a citation of the Secretary of Labor will appeal to the Commission rather than to the Secretary, as is the case in the committee bill. We will, with this amendment, provide for a separation of powers. Standards will be promulgated by the Secretary of Labor and contested citations will be considered by an independent court, so to speak, an independent review commission.

After we make that change and the others we have agreed to, there is only one real difference, and that is with respect to the setting of standards. The Department of Labor is already in the position of having

the know-how at hand. Why try to drag the safety program along for a long time and not provide employees with adequate safety, when we can get a program into operation overnight with the committee bill. At the same time, we will be giving all the interested parties an independent court to go to for the hearing of any complaints.

Let me emphasize again, there is nothing in our bill which authorizes strikes without pay. Nevertheless, if the committee bill prevails, we are going to clarify that language with an amendment. We are only proposing to do in this bill what we are already doing in the Construction Act, where the authority is in the Department of Labor. The substitute bill provides that the Department of Labor may promulgate standards for the construction industry. If it is good for the construction industry, I think it is good for all the industries of this country. In conclusion, let me urge all members of the committee to vote against the substitute bill and support the committee bill. We certainly do not intend to work a hardship on any industry in this country. Our purpose is to insure safety. If there are any penalties in the committee bill that are deemed unjust, I can assure the members the House Committee on Education and Labor will reconsider those provisions.

Mr. DENT. Mr. Chairman, will the gentleman yield?

Mr. PERKINS. I yield to the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, it goes without question that the only real difference is in the cost of doing the job.

We name a board of five members to be confirmed by the Secretary. They will spend a minimum of a quarter million dollars a year. We will still have to go to the only source of knowledge and expertise in the field of industrial safety. There is no other source of information except the experienced bureaus and departments with the Offices of the Secretaries of Labor and Health, Education, and Welfare. It is working absolutely to perfection in the field of mining, as far as the coal mines are concerned. I urge that the substitute be defeated.

Mr. GALIFIANAKIS. Mr. Chairman, I rise in support of H.R. 19200, the Occupational Safety and Health Act.

No one here today should doubt the need for this legislation. More than 14,500 workers are killed in on-the-job accidents each year, higher than the American death toll in Southeast Asia. By a conservative estimate, another 21½ million workers each year are injured to the point of disability.

There is little reason to believe that the situation is improving. Over the past 12 years, we have experienced a 20-percent increase in the number of disabling injuries per million man-hours. And in 1969 alone, it is estimated that occupational accidents cost \$1.5 billion in wages and \$8 billion in gross national product.

I am pleased, Mr. Chairman, that the House of Representatives is addressing itself to this problem in the closing days of the session.

But I think there are some provisions of H.R. 19200 which need clarification. Unless the intent of these provisions is explained for the record, I fear that we may lose some of the effectiveness of this bill.

Mr. Chairman, I asked the gentleman from Wisconsin (Mr. Zeiger), who is the author of this bill, several pertinent questions and I included these questions and answers as a part of my remarks.

Following are the questions along with the answers:

Question. As I interpret section 9(a) of H. R. 19200, until a Federal inspector has presented his credentials, he lacks the authority to enter and inspect a business or workplace. Is that correct?

Answer. It is. Section 9(a) provides in part that: " * * * the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—(1) to enter without delay and at reasonable times * * * and (2) to question * * * and to inspect and investigate. * * *"

So until the inspector has presented his credentials, he is not empowered to enter a business or workplace. I might add that this is a feature common to both H. R. 19200 and H. R. 16785.

Question. And the inspector not only must present these credentials, but he must present them to the owner, operator, or agent in charge. Is that not correct?

Answer. It is.

Question. Then I would ask the gentleman this: Is it legal under the terms of H. R. 19200, for a (or ranking) employee of a firm to leave a Federal inspector standing at the entrance to a business simply by saying, "I am sorry, but I must locate the owner, operator, or agent in charge before you may present your credentials and enter"? If that sort of evasion is legal under this bill, then we have lost the value of holding unannounced inspections.

Answer. My answer is, that such an evasion is not legal under H. R. 19200. Under my bill, it would constitute interference with a Federal inspector subject to the criminal penalties of section 17(c). And I think the words "without delay," which appear in section 9(a)(1) of H. R. 19200, make it a stronger bill in this regard than the committee version.

Question. This clarifies that important point. I have two other questions. First, I am bothered by the term, "agent in charge." Is it the gentleman's intent that wherever a business or workplace is inhabited, there is necessarily someone who is the "agent in charge?"

Answer. That is correct.

Question. And in the event that an "agent in charge" could not be located within a reasonable time, would the Federal inspector be able to gain entry by presenting his credentials to any other employee?

Answer. I would say so. In general, it is our intent in H. R. 19200 that the Federal inspector should gain entry to a business or workplace with an absolute minimum of delay.

Mr. Chairman, I appreciate the gentleman from Wisconsin's candor and his desire to meet every question that was asked. I have studied H. R. 19200 in recent weeks. I have been impressed by the gentleman's work in shaping a straightforward piece of legislation which will do much to reduce the toll from on-the-job accidents.

Mr. SUMNER of Wisconsin. Mr. Chairman, section 9(a) of the bill provides that in carrying out the purposes of the act, the Secretary is authorized to enter and inspect a factory "upon presenting appropriate credentials to the owner, operator, or agent in charge." A question has been raised as to who exactly may be considered the agent in charge. For example, will the inspector have to wait outside the factory interminably while someone inside goes off to find "an agent in charge"? The way we envision this provision as operating is that the inspector will present himself at the factory entrance and he will ask to see the agent in charge. The inspector will present his credentials to any employee who presents himself as the agent in charge. Now, if no person shows up stating that he is the agent in charge, then we do not intend that, under those circumstances, the inspector is going to wait an indefinite amount of time for such an agent to show up; and we certainly do not expect the inspector to give up and go back to his office. If none of the employees, purporting to be the agent in charge, shows up after a reasonable time, then we contemplate that the

inspector, acting for the Secretary, could regard any employee as the agent in charge for the purpose of presenting credentials under the act.

I would add that in carrying out inspection duties under this act, the Secretary, of course, would have to act in accordance with applicable constitutional protections.

As to what is meant by a "reasonable time and manner" in connection with inspections, this I believe will have to be left to the interpretation of the Secretary and of the courts. This test of reasonableness will be applied on a case-by-case basis. But we could say that, in general, the term means during regular working hours and in a manner which does not unnecessarily disrupt normal business procedures.

Mr. HULL. Mr. Chairman, I do not believe that any Member of the House of Representatives is opposed seriously to sensible requirements for health and safety in industry. I have heard, during this debate, many statements affirming support for legislation improving conditions.

The means to advance industrial safety is through cooperative efforts of employer and employees. The Federal Government has a natural interest in this area and its role in bringing about effective reform is proper. However, I am greatly concerned that the legislation proposed by the Committee on Education and Labor will not foster a climate favorable to this progress.

Instead of stimulating the necessary improvements, H.R. 16785 will be a divisive influence that would achieve little, if any, safety improvement.

One of the failures of the bill, even in the form which the committee chairman would now propose, is the failure to provide for the separation of powers. The committee bill sets up the Secretary of Labor as a czar to establish standards to enforce and inspect plantsites and to penalize those who have violated his regulations. The secretary is given almost unlimited powers.

Second is the fact that, although certain changes are proposed related to the imminent danger section, still, the issuance by an inspector of the citation with a penalty to be levied at a later time is ill advised.

In short, the committee bill is replete with provisions that are administratively unworkable, unduly punitive, and highly disruptive of labor-management relations.

For these and other reasons already pointed out in detail by many of my colleagues I favor the Sikes-Steiger amendment, a practical solution to this problem of industrial safety.

It offers effective methods by which we can insure that our working people have a full measure of safety on their jobs. We should do no less.

Mr. HELSTOSKI. Mr. Chairman, H.R. 16785, the Occupational Safety and Health Act, is legislation which is long overdue, with its provisions designed to protect the working men and women by providing safe and healthful working conditions throughout our vast industrial complex.

Under the bill, we would authorize enforcement of standards developed under the act and would assist and encourage the States in

their efforts to assure safe and healthful working conditions by providing for research, education, information, and training in the field of occupational safety and health.

Up to now, State and Federal governmental efforts to insure the occupational health and safety of the American worker have been rather haphazard and performed on a piecemeal basis. Several of the States have been giving this problem much thought and have enacted legislation to protect the workers. Others have not faced this problem squarely and have taken little or no action. While the Federal Government has taken steps to protect workers in the mining, transportation, or those working on projects under Government contract, we have still left a substantial number unprotected. Through this bill we intend to expand our efforts to provide safe and healthful working conditions to these unprotected workers.

According to the National Safety Council statistics, there were 14,500 deaths and over 2 million disabling injuries due to industrial accidents in 1968. There are 390,000 new cases of occupational disease reported annually.

Mr. Chairman, I am not alone in my concern for the problem. The Congress is concerned, or we would not have this bill before us now. The President is concerned, as he indicated in a message to Congress on August 6, 1969, in which he declared:

Technological progress can be a mixed blessing. The same new method or new product which improves our lives can also be the source of unpleasantness and pain. For man's lively capacity to innovate is not always matched by his ability to understand his innovations fully, to use them properly, or to protect himself against the unforeseen consequences of the changes he creates.

The side effects of progress present special dangers in the workplace of our country. For the working man and woman, the byproducts of change constitute an especially serious threat. Some efforts to protect the safety and health of the American worker have been made in the past both by private industry and by all levels of government. But new technologies have moved even faster to create newer dangers. Today we are asking our workers to perform far different tasks from those they performed 5 or 15 or 50 years ago. It is only right that the protection we give them is also up-to-date.

There has been much discussion in recent months about the quality of the environment in which Americans live. It is important to note in this regard that during their working years most American workers spend nearly a quarter of their time at their jobs. For them, the quality of the workplace is one of the most important of environmental questions. The protection of that quality is a critical matter for government attention. • • •

Consider these facts. Every year in this country, some 14,000 deaths can be attributed to work-related injuries or illnesses. Because of accidents or disease sustained on the job, some 250 million man-days of life are lost annually. The most important consequence of these losses is the human tragedy which results when an employee, often the head of a family, is struck down. In addition, the economy loses millions of dollars in unrealized production and millions more must be used to pay workers a compensation benefits and medical expenses. It is interesting to note that in the last 5 years, the number of man-days lost because of work-related injuries has been 10 times the number lost because of strikes.

What have we done about this problem? The record is haphazard and spotty. For many decades, governmental responsibility for safe workplaces has rested with the States. But the scope and effectiveness of State laws and State administration have waned and disappeared in the perturbances of State programs seem to be increasing. Moreover, some States are fearful that strikes will place them at a disadvantage with other States.

Mr. Chairman, I support this legislation because it is designed to insure a safe and healthy work environment for the men and women workers in our country. It can become a landmark of utmost importance in the history of social legislation. It is not the result of some sudden disaster, but a carefully thought out product to provide for the establishment and enforcement of safety standards throughout the United States.

I wish to commend the distinguished chairman of the Select Labor Subcommittee, the gentleman from New Jersey (Mr. Daniels), for his able work in developing this landmark legislation and bringing it to the House floor for consideration. I would also like to praise the chairman of the Education and Labor Committee, the gentleman from Kentucky (Mr. Perkins), for his contributions and foresight in reporting such a strong bill from the committee. I congratulate them on this momentous achievement in behalf of all Americans.

We will fail the workers of America if we do not pass this legislation.

Mr. PUTNISKI. Mr. Chairman, I want to commend the chairman of the Select Subcommittee on Labor, the gentleman from New Jersey (Mr. Daniels), on his diligent efforts in bringing H.R. 16785 to the floor.

There is no question that we need an Occupational Safety and Health Act. We all know the horrible statistics of lost lives, of disabling injuries, of incapacitating diseases. From the time this House began debate yesterday to the present moment, an estimated 40 Americans died from job related injuries or disease. Over 6,000 workers were disabled or injured.

Yet, at present, some 80 million Americans are either insufficiently protected or not protected at all by State or Federal laws. One of our great concerns is with the environment. Let us not forget that for most people, the workplace is their environment for 8 or 9 hours a day.

I have studied the Daniels bill as well as the substitute bill. The Daniels bill is a comprehensive, well-thought-out measure to lessen the number of industrial accidents and occupational diseases.

I support the committee bill provision entrusting the Secretary of Labor with the issuance of safety and health standards. What this Federal Government does not need is another multimember board. It seems every time a new program is adopted that we must appoint a new board. There is absolutely no need for an Occupational and Health Safety Board.

The Department of Labor is the logical means of implementing this bill. The proponents of the substitute measure state that we are delegating too great a power to the Secretary of Labor; that we are ignoring the separation of powers theory. That theory was devised to impose checks and balances on the three co-equal branches of our Government.

We have precedent after precedent where regulatory agencies have been established with factfinding, rule promulgation, and enforcement powers.

To assure an effective program, the Secretary of Labor and, ultimately, the President, must be held accountable—not a multimember board.

Mr. Chairman, I support H.R. 16785 as a giant step toward making all Americans secure from hazardous working conditions and safe from disabling diseases.

Mrs. SULLIVAN. Mr. Chairman, I have listened carefully to the debate on this measure, and have studied the background of the legislation over a number of years. Despite the many letters I have received from businessmen in St. Louis expressing alarm over aspects of the bill, I believe the weight of evidence clearly establishes that this legislation is urgently needed, and should be passed. I shall therefore vote for it.

Those who oppose the bill charge, or complain, that it will lead to frivolous disruptions of industrial production, under arbitrary and arrogant administration by the U.S. Department of Labor. If that were to occur, there are clear-cut remedies available to industry—and Congress would be quick to act to prevent this measure from being used as harassment for industry.

On the other hand, further delay in the enactment of this long-needed legislation, out of fear that some bureaucratic some day may exceed his authority, would be to condemn innocent workers to unnecessary loss of life or to serious injury—deaths or injuries which could be prevented under this legislation.

In my own opinion, those large industrial firms which are most articulate in opposing the bill, would have the least to fear under it, for they have been aware of occupational hazards in their own plants for many years and have worked conscientiously to reduce or eliminate these hazards. Plants where worker safety has not received the care and attention it should receive have a much more understandable case against this bill, for they would be seriously affected by it.

As in any field where the Federal Government imposes restrictions or procedures intended to protect the health of the American people, the impact is often heaviest on those smaller firms which encounter economic hardship in coming into compliance. For this reason, the Small Business Administration must be prepared to assist any such firm in obtaining necessary new equipment to protect its employees.

This is not a new problem—we have recognized such a problem in connection with compulsory meat and poultry inspection in plants engaged only in intrastate commerce, in connection with pollution control measures, and so on.

BACKGROUND OF OCCUPATIONAL SAFETY BILL.

Mr. Chairman, the bill before us today represents years of hard work by members of the House Committee on Education And Labor in drafting legislation which would meet the problem head-on of protecting American workers against the heavy toll of death, injury, and disease on the job. I commend the committee for its efforts. Many years ago, Congress called for safety standards on work done under contract to the Federal Government, so this is not a new thing. But in most industrial operations, the safety standards are either completely voluntary, or are State imposed and too often not really enforced. Some States have good laws and good enforcement, but not enough of them do.

About a dozen years ago, I learned about the deaths in St. Louis of several workmen after being directed by their supervisors to perform a task involving the use of carbon tetrachloride. Apparently, they were given no guidance or instruction or warnings. In looking into this incident to see if any Federal law covered situations of this kind, I found that the Bureau of Labor Standards in the Department of Labor had issued many warnings and guidelines for the use of carbon tetrachloride, but the Federal Government itself had no powers to protect the workers. I then asked the then Secretary of Labor James Mitchell to prepare for me a draft of a bill which I could introduce to set up mandatory standards for the safe use of hazardous materials in industry. The Secretary declined, and indicated that the problem was not serious enough to warrant Federal legislation.

Later, I was asked by a group of workers in another St. Louis plant to help them find out why so many of the employees in that plant had suddenly begun developing skin diseases when, so far as they knew, none of the production processes in the plant had been altered in any way. Local and State authorities had not been able to locate a probable cause. I was able to arrange to have the U.S. Public Health Service send a team of investigators into the plant to make an on-the-spot survey of plant procedures and chemicals in use to determine the source of the infections. This investigation disclosed that—unknown to the plant management—a chemical used for a long time without injury in the plant's operations had been changed somewhat in composition by the manufacturer without any notice or warning to the plant in St. Louis using the product in its processes. When the problem was thus pinpointed, the hazard was removed. But in the meantime, some of the workers had developed liver disease or other serious side effects.

The Hazardous Substance Labeling Act, which requires full warnings on the labels of all dangerous substances sold for use in the household, does not apply to the same materials packaged for use in industry. So the worker has had no protection from the unknown toxic or other hazardous effects of bleaches, solvents, paints, and chemicals of all kinds used in industry, even though exactly the same products, when purchased for use in the home, must be clearly labeled as to their dangerous properties.

INTRODUCTION OF FIRST BILL IN 1965

In 1965, therefore, I introduced what I believe was the first bill on this subject of industrial hazardous materials other than those covered in the Atomic Energy Act. I asked then Secretary of Labor Willard W. Wirtz to study this bill—H.R. 1179 of the 89th Congress—as a prospective administration measure to meet one of the serious problems in American industry. Following my request, a task force was set up by Secretary Wirtz to go into this matter, under the direction of Assistant Secretary of Labor Esther Peterson. The eventual result was the proposed Occupational Health and Safety Act, similar to the bill now before us, which goes far beyond the original proposal I had made dealing only with hazardous materials.

I have cited this background, Mr. Chairman, because so many businessmen who wrote to me on this issue have wondered how this measure

ever got started—what brought it on. It did not come out of the blue. The need has existed for a long time. The Johnson administration, which pioneered in many areas of domestic legislation to help protect workers and all Americans as consumers, deserves great credit for having initiated this broadly based legislation to cover the whole field of industrial safety. It had great courage in proposing this far-reaching bill.

My one regret about this whole matter is that Secretary Wirtz did not get behind H.R. 1179 of the 89th Congress and endorse it immediately as an administration measure which, with administration support, could have been passed quickly and without too much controversy and then carried the idea further with the proposal for this much broader bill. In that way, the workers of this country would have been protected during the past 6 years in at least this one area involving the use of hazardous materials and substances in industry.

TEXT OF 1965 BILL WHICH LED TO PENDING MEASURE

As part of the legislative history, Mr. Chairman, I submit for inclusion at this point, under unanimous consent, the text of my 1965 bill, reintroduced in the 90th Congress, and as introduced in the 91st Congress at H.R. 909, as follows:

H.R. 909

91st Congress, 1st Session, in the House of Representatives, January 3, 1969.

Mrs. Sullivan introduced the following bill: which was referred to the Committee on Education and Labor)

A BILL To provide reasonable safeguards for employees working with or exposed to the dangers of hazardous materials

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Hazardous Materials Safety Act."

SEC. 2. (a) The Congress finds that the exposure to or the handling of hazardous materials without proper precautionary measures or without full knowledge of the dangers involved poses a threat to the life, health, and safety of workers, and that the threat to such workers has the effect of hindering and obstructing interstate commerce and the free flow of goods in interstate commerce.

(b) The Congress declares that it is the purpose of this Act through the exercise by Congress of its power to regulate commerce among the States, to provide for the safety of such workers by requiring that employers take such measures as are reasonably necessary to protect workers from the dangers of materials.

SEC. 3. As used in this Act—

(1) The term "Secretary" means the Secretary of Labor.

(2) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(3) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or the Commonwealth of the Virgin Islands, the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and the Canal Zone.

(4) "Employer" includes any person acting directly or indirectly in the control or management in relation to an employee but shall not include the United States or any State or political subdivision of a State.

(e) "Employee" includes any individual.

(f) the term "hazardous material" means—

(1) any substance or mixture of substances which the Secretary determines by regulation (A) is toxic, (B) is corrosive, (C) is an irritant, (D) is flammable, or (E) generates pressure through decomposition, heat, or other means, and which may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling, use, or exposure thereto, including such exposure as may result from accident.

(2) any radioactive substance which the Secretary determines by regulation to be sufficiently hazardous to require that necessary precautions be taken to protect employees, provided that the term "hazardous material" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

Sec. 4. Every employer having employees engaged in commerce or the production of goods for commerce shall safeguard his employees from the dangers of hazardous materials by taking such precautions as the Secretary may determine by regulation to be reasonably necessary to protect the life, health, and safety of such employees. Such regulations shall be in accord with the best known practicable means for securing the safety of persons coming within the proximity of hazardous materials, including the marking of containers holding hazardous materials, the use of protective devices, equipment, and clothing, and such other precautionary measures as the Secretary finds necessary to safeguard employees who handle or may be exposed to hazardous materials. Such regulations, as well as all changes or modifications thereof, shall, unless a shorter time is authorized by the Secretary, take effect ninety days after their formulation and publication by said Secretary and shall be in effect until reversed, set aside, or modified.

Sec. 5. In the administration of this Act, the Secretary shall seek the advice and assistance of those departments, agencies, or establishments of the United States engaged in similar work. The Secretary may utilize the facilities or services of any department, agency, or establishment of the United States with the consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, provide such services and facilities as he may request for his assistance in the administration of this Act.

Sec. 6. For the purposes of the enforcement of this Act, the Secretary or his designated representatives are authorized to enter and inspect, at reasonable times and in a reasonable manner, the premises of any employer to determine whether any person has violated any provisions of this Act or any rule or regulation issued thereunder. No employer or other person shall refuse to permit entry or inspection by the Secretary or his representative as authorized by this section.

Sec. 7. Any employer may request the advice of the Secretary or his authorized representative in complying with the requirements of any regulation issued pursuant to this Act. In case of practical difficulties or unnecessary hardships, the Secretary in his discretion may grant variations from any such regulation, or particular provisions thereof, if he finds that the purpose of the rule or regulation will be observed by the variation and the safety of employees will be equally secured thereby. Any person affected by such regulation, or his agent, may request the Secretary to grant such variation, stating the grounds on which his request is based. Any authorization by the Secretary of a variation shall be in writing. A property indexed record of all variations shall be kept in the Office of the Secretary and open to public inspection.

Sec. 8. Whoever violates or fails to comply with the provisions of section 4, or with any regulation adopted to carry out the provisions of section 4, or who interferes with, hinders, or delays the Secretary or his authorized representative in carrying out his duties under section 6 by refusing to admit the Secretary or his authorized representative to any place, or to permit the inspection or examination of any place of employment, shall be guilty of an offense and, upon conviction thereof, shall be punished for each offense by a fine of not more than \$1,000 or imprisoned not more than one year, or both.

Sec. 9. Whenever it shall appear that any employer has violated or is about to violate any of the provisions of this Act, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate. Any such action may be brought in the district court of the United States where the violation occurred or is about to occur, or where the principal office of such employer is located.

Sec. 10. The provisions of this Act shall have no application to hazardous materials while such materials are being transported by motor carriers, air carriers, rail carriers, or vessels engaged in interstate commerce. Nothing in this Act shall be construed to modify or amend the provisions of chapter 39, title 48, United States Code, as amended (48 U.S.C. 831 et seq.), or any regulations promulgated thereunder, or under sections 304(a) (2) and (3), title 49, United States Code, (relating to the transportation of dangerous substances and explosives by surface carriers), or of section 1421, title 49, United States Code, or any regulation promulgated thereunder (relating to transportation of dangerous substances and explosives in aircraft); or of chapter 7, title 46, United States Code, as amended (46 U.S.C. 170 et seq.), or any regulations promulgated thereunder (relating to transportation of dangerous substances and explosives in vessels).

Sec. 11. If any provision of this Act, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Sec. 12. This Act shall take effect ninety days after the date of its enactment.

Mr. HOSMER. Mr. Chairman, I have carefully examined both this bill and the proposed Steiger Sikes substitute which I believe is likely to be adopted shortly. I am satisfied that neither version of this legislation is intended to interfere with, affect, or modify in any way the authority or responsibilities lodged in the Environmental Protection Agency and I am satisfied that the enactment of either version would not do so. The same is true as to other Federal agencies which prescribe and enforce standards and issue regulations in the health and safety fields.

Mr. DONOHUE. Mr. Chairman, I most earnestly hope this occupational health and safety bill, H.R. 16785, with the committee recommended amendments, will receive the approval of the great majority of the Members of this House.

There is clear and overwhelming evidence to substantiate the very urgent need for this legislation. In summary, the authoritative testimony and evidence is that the death toll from on-the-job accidents amounts to 14,500 a year; there are more than 2.2 million disabling injuries a year; that these work accidents and illnesses cost the American economy some \$8 billion per year and, ironically, there are more game wardens in the United States today than there are health and safety inspectors which obviously means that most animals are better protected than the working men and women of this country.

Let us further bear in mind that the experts advise us they conservatively estimate that annually some 200,000 to 400,000 industrial accidents go unmentioned by Federal and State tallies and there is, as yet, no count at all of the great and undetermined number of disabling on-the-job illnesses caused by chemical poisoning hazards in certain occupations. It is hoped that the research activity in this area, that is provided for in the bill, will enlighten and guide us toward correction in this particular and growing field of occupational safety.

Mr. Chairman, the urgency of this legislation is almost universally admitted as our only real task is to develop, for approval, a majority acceptable bill that will effectively correct and eliminate the nearly unbelievable death, disease, and accident rate that plagues the working

people of this country because of the lack of safety standards, with adequate enforcement procedures, in their places and surroundings of employment.

I believe that the legislative measure now under consideration, with the modifications proposed, will provide and establish fair and reasonable standards for the prevention and elimination of on-the-job accidents, illnesses, and diseases to our working people, together with effective procedures for the enforcement of these standards. There is no question but what approval of this substantive legislation is in full accord with the highest environmental protection objectives of our people and our Government, and that this particular legislation is in the national interest. Therefore, I urge its adoption without extended delay.

Mr. RARICK. Mr. Chairman, a cursory study of H.R. 16785 indicates it provides for a power grab by the federal system relying on the emotional appeal of assuring safe and healthful conditions for working men and women.

Passage of this bill as is would not only surrender to the Secretary of Labor delegated powers to write, police, and enforce labor-management laws, but it smacks of creating a commissar, with unprecedented powers, in the Secretary of Labor.

It is truly unfortunate that many well-meaning people have been led to believe that this type of nationalization by legislation is necessary for protection of our working people or that a law can produce safe and healthful working conditions.

The suggestion as well as the thrust of this emotional rationalization is an insult to one's intelligence. We are now led to believe that only the Federal Government is interested in the safety and well-being of our working people and that only Federal bureaucrats can, as if by magic, prevent injuries, disease, and weakness to America's labor force.

I question such statements, especially in view of our experience resulting from other Federal takeovers, nationalizations, and threats of pocketbook deterrence. Thus far every usurpation by the federal system directed toward national socialism has never achieved its goals, but to the contrary has thwarted the free activity of our society by needless redtape, controls, fear, and intimidation.

The Federal revolution into the private sector of our Nation has only resulted in socializing the field, taxing it to death, or running the industry out of the United States.

The substitute proposal by Messrs. Steiger and Sikes, as I understand it, offers some moderation to the bill by placing the powers under a board and changing the nature of the duty placed on the employer. While I feel the substitute measure presents less threat to our free enterprise system and has been acknowledged to be the lesser of the two evils by many informed citizens, industrialists, chambers of commerce, and the like, it is nothing more than galloping socialism in a more palatable phraseology.

National socialism under an appointed board is just as great a threat as is national socialism under an appointed commissar. Past experience proves that every Federal agency uses its power but to beget more power.

I cannot believe either bill provides a constitutional role for the Federal Government. As the lesser of the two evils, I plan to cast my people's vote for the substitute measure. Whether or not the substitute

is accepted, my oath of office and my confidence in the American system of free enterprise compels me to vote against either measure on final passage.

Mr. ROBINSON. Mr. Chairman, the subject of occupational health and safety is one which has received much attention recently. Indeed, if other Members' mail is running at all like my own, there can be little doubt that this issue is of utmost importance to many and varied groups. And yet, despite the differences enunciated by the various interest groups, there seems to be a general recognition that some job-safety legislation is needed. As one of my constituents—a businessman—observed in a recent letter:

The safety and well being of our employees is of paramount importance to the success of our firm not only as a business but also as an employer. Neither our firm nor any other business in the United States can afford the position of being opposed to the safety of its employees.

Thus, in our discussion of the choice before us today, I trust that we shall not lose sight of the very real necessity of passing some form of job safety and health legislation this year. The statistics are appallingly clear; the need is great.

Although the Department of Labor and the National Safety Council estimate that 90 percent of all occupational accidents could be eliminated, the injuries and loss of life continue unabated. It has been reported that between 1958 and 1968 there was an increase in disabling injuries of from 11.4 per million man-hours to 14 injuries per million man-hours. And yet, as alarming as is such an increase in injuries, the raw statistics are even more compelling. Each year some 14,500 men and women die as the result of occupational injuries and some 2,200,000 receive disabling injuries. This statistic, reduced to a daily average translates into 55 men and women being killed each day, 8,500 being disabled and 27,500 hurt daily.

Moreover, the prospects for those entering the labor force are not encouraging. Only 23 of every 100 men and women entering the labor force can expect to complete their working lives without an injury. Of the 77 percent who will be involved in an industrial accident, one will die, six will suffer a permanent injury, and 70 will experience one or more disabling injuries.

Although there is no way to equate the human misery that results from these injuries, I do think that the financial cost of those injuries is relevant to our inquiry here today. Labor Department statistics show that occupational accidents and diseases annually result in lost wages of approximately \$1.5 billion. Such occupational hazards require that \$1.8 billion be paid in workman's compensation claims and account for medical expenditures in the range of \$600 million yearly. The outright cost to the economy is a loss of \$7.4 billion to the gross national product. Finally, the loss of work from accidents is roughly 16 times greater than the loss from strikes and amounts to some 260 million lost man-days of productivity.

As great as these losses are, and even though job-related accidents are on the rise, there is no comprehensive program of inspection and enforcement of minimum safety standards. Perhaps the lack of priority given to this compelling need is most vividly pointed out by the fact that State safety staffs range from one inspector per 15,000 workers to one inspector per 100,000 workers, with State expenditures for safety programs ranging from 2 cents to \$2.11 per capita. Perhaps

the absurdity of our priorities is best illustrated by the fact that there is only one State—New York—which reports having more safety inspectors than game and fish inspectors; and in some States the game and fish inspectors outnumber the safety inspectors by 30 to 1.

A danger not adequately reflected by the statistics I have set forth is that of occupational diseases. First and foremost, we do not have adequate statistics to determine precisely the scope of the problem but, despite that inadequacy, in 1968 the Department of Health, Education, and Welfare reported 336,000 cases of occupationally related diseases. Moreover, we have not done enough research to know what activities being engaged in by industry are or may be dangerous to employees. It may well be that substantial numbers of employees are unknowingly being exposed to disease and hazard while on the job that may not evidence itself for years after the initial exposure.

I have pointed to these various statistics because I fear that, in our disagreements over the form that job-safety legislation should take, we might overlook the most compelling need for arriving at some type of comprehensive occupational health and safety legislation. We have an obligation to all employees to hammer out a bill which can resolve this cogent need.

At the same time, we must not lost sight of the requirement that, whatever form the legislation which we forge takes, that legislation must accomplish the job in the most effective fashion and that it must be as equitable as possible to both the employer and the employee. There is a need—indeed a compelling need—for legislation; however, we must be cautious that in our zeal to take corrective action we do not take precipitate action which might be both unnecessary and unwise.

H.R. 16785, more commonly referred to as the Daniels bill, has two glaring faults which, in my mind, make it unacceptable. First, the Secretary of Labor would be invested with the authority to promulgate standards, conduct inspections and finally be the arbiter of the fact of violations. As the minority views indicate, giving such authority to the Secretary of Labor "is tantamount to having the chief of police, in addition to his regular duties, also write criminal laws and then act as judge and jury." Second, the Daniels bill would allow an inspector to shut down a plant in certain situations, without giving the employer the opportunity to be heard on the matter. Such a procedure amounts to a denial of due process as guaranteed by the Constitution. Surely, a more reasonable approach would be to make available injunctive relief in Federal court which should be sufficient to achieve the aim of protecting employees from dangerous conditions while at the same time giving employers the benefit of being heard before action is taken.

Besides these two provisions which I find sufficiently pernicious as to mandate a vote against the Daniels bill, additionally there is a third provision which may have serious ramifications if left in its present form. That provision, section 5 of H.R. 16785, requires each employer to "furnish to each of his employees employment and a place of employment which is safe and healthful." While I certainly do not object to the aim of this provision—for indeed employers should furnish safe jobs and places of employment—the complete absence of any standards to define such a broad requirement makes the extent of the duty of the employer sufficiently vague as to place an impossible

leaven upon him. I believe that the worthwhile objectives behind this provision could be retained by merely employing more precise draftsmanship.

And yet, even though I disagree with certain major provisions of the Daniels bill, there can be little doubt about the need for occupational health and safety legislation. As I have noted, the statistics are clear and compelling, and we should use those statistics as a stimulus for achieving such legislation. I believe that H.R. 12200, commonly referred to as the Steiger substitute, is a more reasonable approach to the needs, a more evenhanded solution to the problems. I am casting my support behind the Steiger substitute because I believe that it protects employees from job-related accidents and disease while at the same time is fair to the interests of the employer.

One other thing: As serious as these job injury statistics are, and they are indeed most serious, I think that it is imperative that we keep them in perspective. Although any injury and death which could be prevented is too much, it should be pointed out that the average American worker is safer at his job than he is at home, on the highway, or at play. The Daniels bill assumes that industry has little or no regard for the safety of its employees, and such an assumption disregards all of the significant strides taken by management in trying to reduce the number of industrial accidents. I cannot support punitive legislation without some evidence that it is the only way to accomplish the goal sought.

The fact which I have mentioned, then rather than being used for punitive and perhaps irrational purposes, ought to be the catalyst which brings about effective and equitable legislation—equitable to both the employee and the employer. In my view, and I have studied this matter most carefully, I believe that the Steiger substitute offers a better approach than the Daniels bill, and I shall cast my vote for that substitute.

Mr. HORROX. Mr. Chairman, after listening closely to today's and yesterday's debate on the Occupational Safety and Health Act, and after considerable study of the legislation of the whole field of industrial safety, I feel there is a definite need for balanced Federal legislation to aid in the prevention of job-related injury and illness.

Because I feel strongly that we need legislation in this field, I will cast my vote for the bill on final passage, as amended by the substitute which the House adopted, despite the fact that the legislation being considered on final passage does not fully meet the test of balance in this area.

During the months which preceded our consideration of this bill, H.R. 10765, thousands of constituent employers and employees contacted their representatives, and both sides—labor and management—adopted pretty much hard and fast positions. Employee interest groups stood firmly behind the unamended language of the Daniels bill, as reported out by the Education and Labor Committee. Employer interest groups stood firmly behind the unamended language of the Steiger substitute, which provided far less stringent and in some instances less onerous enforcement procedures.

I am not happy with either version as originally drafted, and I feel that a compromise between the Daniel and Steiger versions is what is needed to provide fair, effective and balanced occupational safety

legislation. I feel that employee groups are justified that the enforcement procedures provided for in the substitute are not as sure or as strong as they must be to put teeth in the very worthy regulations and programs provided for in the remainder of the Steiger version. On the other hand, I feel equally strong that the Daniels bill as reported from committee contains provisions which go too far into Federal regulation of the employment relationship generally, and too far in imposing burdens and penalties on employers which are not fully necessary to accomplish the purposes of the law—that is, to reduce the number of deaths and injuries resulting from industrial and occupational health and safety hazards.

Thus, I was hopeful that our consideration of H.R. 16785 would result in a balanced and effective compromise, which is what occurred in the Senate when they considered similar legislation. I was even more hopeful of this result when I spoke yesterday to the Secretary of Labor, who informed me that the administration was willing to compromise some provisions of the bill and when I received from Congressman Daniels, a letter detailing five important amendments which he and the committee were prepared to offer to eliminate the unfair provisions of his bill. I would like to read a partial text of his letter, listing these five amendments, which, unfortunately, were preempted by the adoption of the substitute language and thus could not be offered:

1. The "general duty" will be modified to require only that employers provide employment "free from recognized hazards" and there will be no penalty for violation of duty.

2. The provision authorizing the Secretary to order close-downs without a Court order in imminent danger situations will be deleted and exclusive reliance placed on judicial remedies.

3. The provision that has been attacked as giving an employee the right to "strike with pay" will be deleted.

4. The monitoring provisions will be revised to eliminate fears of excess burden on employers.

5. The Construction Safety Act will be amended (as in H.R. 19200) to include all contractors instead of just those performing government work.

I was prepared to support all of these amendments, and I feel that our passage of the committee bill, containing all five of these changes would have met the standard of fairness and balance as between employer and employee.

Thus, in order to make it possible for these amendments to be offered, I voted in both the teller vote and the first rolleall against adoption of the substitute language, and I voted to recommit the substitute after its adoption to permit the amendments to be offered and a more balanced bill to be passed.

However, the choice is no longer between the Steiger substitute and the Daniels bill, or between either bill and a better compromise version. The choice as we prepare for the final vote is between adopting the substitute—thus permitting a compromise to be worked out in conference with the Senate—and adopting no legislation at all on occupational safety in the 91st Congress.

My priority, knowing the seriousness of the problem of industrial safety in many industries, must be on assuring that some workable legislation is passed. In talking with the Secretary of Labor yesterday, he assured me that his and the President's priority was on achieving congressional approval of a bill on this subject before adjournment.

Employees are surely looking to Congress for legislation to add job safety protections, and even some large employers in my district with exemplary safety records have recognized the need for Federal legislation in this area.

Thus, I am casting my vote for the substitute on final passage, in the hope that its adoption will lead to a balanced and effective bill emerging from conference.

Mr. RANDALL. Mr. Chairman, I support the committee bill, H.R. 16783, the Occupational Safety and Health Act, rather than the substitute, H.R. 16200, for the reasons I shall present very shortly. Should the Committee of the Whole accept the substitute, then I shall cheerfully accept that verdict and support the substitute.

Mr. Chairman, the question today is not whether we should have an industrial health and safety act. Just about everyone agrees it will be a good thing for our workers, and a good thing for the country. There remain only some few differences as to the best provisions.

The need is pinpointed by the 1968 statistics of the Public Health Service, which revealed that 14,500 workers were killed on the job; 2.2 million suffered disabling injuries; and at least 390,000 workers suffered occupational illnesses last year. Exposures on the job last year which may result in serious illness and death in the future cannot be counted—for example, zinc, lead or mercury poisoning, asbestosis or silicosis. Five times as many workdays are being lost because of occupational hazards, accidents and illnesses as are lost because of work stoppages over labor-management differences. The Public Health Service says these statistics represent no more than half and may be only a quarter of the actual job related human devastation.

It is true that a few States such as California and New York have strong occupational safety and health programs, but most State programs are inadequate. Some States have so few inspectors that they spend as little as 2 cents per worker per year on job safety enforcement. It has been said there are as few as a total of 1,000 State safety inspectors altogether in all of the States in this country. There are only a few States that have as many as 100 inspectors. It happens there are only three States that require that their inspectors be trained in the field of occupational health and safety. It is most ironical that we find there are twice as many fish and game wardens in the United States as there are safety and health inspectors.

Throughout all the hearings and the preliminary conversations among committee members, it is a tribute to both the committee majority and its minority members that there was a sincere effort on the part of both sides to come closer together to avoid the necessity of a substitute.

Let us not forget that the substitute itself had come a long way from the administration proposal. The original administration plan called for a sort of kind of consensus to try to arrive at safety standards. There was no provision for the requirement of "general duty" for job safety on the part of the employer. It provided for a penalty against the employer only when there appeared to be a "willful" violation. There was no penalty for what could be considered a "serious" violation.

The main difference to the two approaches boils down to the proposition of whether there should be a centralization of authority on the one hand, as in the Secretary of Labor, or a diffusion and dilu-

tion of authority on the other hand, as in a board or commission. It becomes not a question of authority or power alone, but equally important, a matter of responsibility for job safety, and then finally a matter of accountability for both good standards and regulations and also their fair but firm and impartial enforcement.

The worst feature of the substitute is that we take away and remove the accountability by the committee bill, and we put in its place a commission or perhaps we should say a faceless board and even a kind of nameless board, because we have no assurance they will be well known, and certainly not directly accountable to anyone. Such a commission or board could provide the means for those who seek to evade safety regulations or avoid enforcement of standards to have something to hide behind.

The matter of occupational well-being is of such widespread concern and consequence, Federal responsibility for protecting workers against dangerous and unhealthy working conditions most certainly merits the concern for a Cabinet officer. Inherently, those matters affecting labor are within the Department of Labor. Therefore, administration and enforcement of the Occupation Safety and Health Act should be delegated to the Secretary of Labor.

The Secretary of Labor is both responsible and politically accountable to the President. We would have better safety regulations by a department headed by a Secretary, than to wind up with a kind of five-man Secretary of Labor that could pass the buck from one to another, absent themselves on occasion, or fail to meet regularly, which is the constant temptation of any board or commission. There has been far too great a trend recently to government by commissions or boards—such as the Scranton, Ash, Kerner, Kappel, Eisenhower commissions, and many others. We have already had too much government by commission.

Legislation in the area of occupational health and safety should have as its objective adequate protection for the worker with reasonable safeguards against health damage due to his job exposures, within a framework of regulation and enforcement that is neither oppressive nor needlessly costly and without unjustified harassment of management.

The CHAIRMAN. All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentleman from Wisconsin, Mr. Steiger, as amended.

Mr. STEIGER of Wisconsin. Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Steiger of Wisconsin and Mr. Perkins.

The committee divided, and the tellers reported that there were—
ayes 185, noes 114.

So the amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. The question now occurs on the committee amendment as amended by the amendment in the nature of a substitute.

The committee amendment, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Corman, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 16785), to assure safe and

healthful working conditions for workmen and women; by authorizing enforcement of the standards developed under the act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes, pursuant to House Resolution 1248, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment?

Mr. PERKINS. Mr. Speaker, I demand a separate vote on the Steiger of Wisconsin amendment, commonly known as the Steiger Sikes substitute, as amended.

The SPEAKER. The Clerk will report the amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: strike out all after the enacting clause and insert:

That this Act may be cited as the "Occupational Safety and Health Act".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers, to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by creating a National Occupational Safety and Health Board to be appointed by the President for the purpose of setting mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Appeals Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) in providing medical criteria which will assure insofar as possible that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) in providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) in providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "Safety and Health Appeals Commission" means the Occupational Safety and Health Appeals Commission established under section 12 of this Act.

(3) The term "Board" means the National Occupational Safety and Health Board established under section 8 of this Act.

(4) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than a State as defined in paragraph (8) of this subsection), or between points in the same State but through a point outside thereof.

(5) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(6) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(7) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(8) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(9) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(10) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (a) has been adopted and promulgated by a nationally recognized public or private standards-producing organization possessing technical competence and under a consensus method which involves consideration of the views of interested and affected parties, and (b) has been designated by the Board, after consultation with other appropriate Federal agencies.

(11) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.

APPLICABILITY OF ACT

SEC. 4. This Act shall apply only with respect to employment performed in a workplace in a State, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, or the Canal Zone, except that this Act shall not apply to any vessel underway on the Outer Continental Shelf lands. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no Federal district courts having jurisdiction.

DUTIES OF EMPLOYERS

SEC. 5. Each employer—

(a) shall furnish to each of his employees employment and a place of employment which are free from any hazards which are readily apparent and are existing or are likely to cause death or serious physical harm to his employees;

(b) shall comply with occupational safety and health standards promulgated under this Act.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

SEC. 6. (a) The National Occupational Safety and Health Board established under section 8 of this Act is authorized to promulgate rules prescribing occupational safety and health standards in accordance with sections 556 and 557 of title 5, United States Code.

(b) Without regard to the provisions of sections 553, 556, and 557, title 5, United States Code, the Board shall, as soon as practicable, but in no event later than three years after the date of enactment of this Act, by rule promulgate as an occupational safety and health standard, any national consensus standard or any established Federal standard, unless it determines that the promulgation of such a standard as an occupational safety and health standard would not result in improved safety or health for affected employees. In the event of conflict among such standards, the Board shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees. Such national consensus standard or established Federal standard shall take effect immediately upon publication and remain in effect until superseded by a rule promulgated pursuant to subsection (a) of this section.

(c) (1) Whenever the Board promulgates any standard, makes any rule, order, decision, grants any exemption or extension of time, it shall include a statement of the reasons for such action, and such statement shall be published in the Federal Register; and

(2) Whenever a rule issued by the Board differs substantially from an existing national consensus standard, the Board shall include in the rule issued a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(d) Any agency may participate in the rulemaking under this section.

(e) The Secretary of Labor (with respect to safety issues) or the Secretary of Health, Education, and Welfare (with respect to health issues) may submit a request to the Board at any time to establish or modify occupational safety and health standards indicated in the request. Within sixty days from the receipt of the request, the Board shall commence proceedings under this section.

(f) Any interested person may also submit a request in writing to the Board at any time to establish or modify occupational safety and health standards. The Board shall give due consideration to such request and may commence proceedings under this section on the basis of such request.

(g) If, prior to the publication of the rule, an interested person or agency which submitted written data, views, or arguments makes application to the Board for leave to adduce additional data, views, or arguments and such person or agency shows to the satisfaction of the Board that additions may materially affect the result of the rulemaking procedure, and that there were reasonable grounds for failure to adduce such additions earlier, the Board may receive and consider such additions.

(h) In determining the priority for establishing standards under this section, the Board shall give due regard to the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, work centers or work environments. The Board shall also give due regard to the recommendations of the Secretary and the Secretary of Health, Education, and Welfare regarding the need for mandatory standards to determine the priority for establishing such standards.

(i) (1) The Board shall publish without regard to requirements of title 5, title 42, United States Code, for its emergency temporary standard include standards after open publication in the Federal Register if: (A) that standard has not been promulgated; (B) from exposure to conditions not controlled by an existing rule, past incidents resulting from the introduction of new processes, and (C) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Board shall commence a hearing in accordance with sections 556 and 557 of title 5, United States Code, and the standard as published shall also serve as a proposed rule for the hearing. The Board shall promulgate a standard under this paragraph no later than six months after publication of the emergency temporary standard as provided in paragraph (2) of this subsection.

(j) (1) Whenever the Board upon the basis of information submitted to it in writing by an interested person (including a representative of an organization of employers or employees, or a nationally recognized standards-producing organization) or by the Secretary or the Secretary of Health, Education, and Welfare, a State or a political subdivision of a State, or on the basis of information otherwise available to it, determines that a rule should be prescribed under subsection (a) of this section, the Board may appoint an advisory committee as provided for in section 7(e) of this Act, which shall submit recommendations to the Board regarding the rule to be prescribed which will carry out the purposes of this Act, which recommendations shall be published by the Board in the Federal Register, either as part of a subsequent notice of proposed rule-making or separately. The recommendations of an advisory committee shall be submitted to the Board within two hundred and seventy days from its appointment, or within such longer or shorter period as may be prescribed by the Board, but in no event may the Board prescribe a period which is longer than one year and three months.

(2) After the submission of such recommendations, the Board shall, as soon as practicable and in any event within four months, schedule and give notice of a hearing on the recommendations of the advisory committee and any other relevant subjects and issues. In the event that the advisory committee fails to submit recommendations within two hundred and seventy days from its appointment (or such longer or shorter period as the Board has prescribed) the Board shall make a proposal relevant to the purpose for which the advisory committee was appointed, and shall within four months schedule and give notice of hearing thereon. In either case, notice of the time, place, subjects, and issues of any such hearing shall be published in the Federal Register thirty days prior to the hearing and shall contain the recommendations of the advisory committee or the proposal made in absence of such recommendation. Prior to the hearing interested persons shall be afforded an opportunity to submit comments upon any recommendations of the advisory committee or other proposal. Only persons who have submitted such comments shall have a right at such hearing to submit oral arguments, but nothing herein shall be deemed to prevent any person from submitting written evidence, data, views, or arguments.

(k) The Board shall within sixty days (where an advisory committee is utilized) or one hundred and twenty days (where no advisory committee is utilized) after completion of the hearing held pursuant to section 6(a) issue a rule promulgating, modifying, or revoking an occupational safety and health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Board determines may be appropriate to insure that affected employers are given an opportunity to familiarize themselves and their employees with the requirements of the standard.

(l) Any affected employer may apply to the Board for a rule or order for an exemption from the requirements of section 5(b) of this Act. Affected employees shall be given notice by the employer of each such application and an opportunity to participate in a hearing. The Board shall issue such rule or order if it determines on the record, after an opportunity for an inspection and a hearing, that the proponent of the exemption has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Board on its own motion in the manner prescribed for its issuance at any time after six months after its issuance.

(m) Standards promulgated under this section shall prescribe the posting of such labels or warnings as are necessary to apprise employees of the nature and extent of hazards and of the suggested methods of avoiding or ameliorating them.

ADVISORY COMMITTEES

Sec. 7. (a) There is hereby established a National Advisory Committee on Occupational Safety and Health (hereafter in this section referred to as the "Committee") consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health, Education, and Welfare, with one regard to the civil service laws and composed equally of representatives of management, labor and the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(b) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(c) The members of the Committee shall be compensated in accordance with the provisions of subsection 8(g) of this Act.

(d) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(e) An advisory committee which may be utilized by the Board in its standard-setting functions under section 6 of this Act shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and also as a member one or more designees of the Secretary of Labor and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Board may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards producing organizations, but the number of persons so appointed to any advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 5191 of this Act. The Board shall pay to any State which is the employer of a member of such committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

NATIONAL OCCUPATIONAL SAFETY AND HEALTH BOARD

Sec. 8. (a) The National Occupational Safety and Health Board is hereby established. The Board shall be composed of five members, having a background either by reason of previous training, education, or experience in the field of occupational safety or health, who shall be appointed by the President, by and with the consent of the Senate, and shall serve at the pleasure of the President. One of the five members may be designated at any time by the President to serve as Chairman of the Board.

(b) Subchapter II (relating to Executive Schedule pay rates) of chapter 53 of title V of the United States Code is amended as follows:

(1) Section 5312 (1) (A), and it is amended by adding at the end thereof the following: "(4) Chairman, National Occupational Safety and Health Board."

(2) Section 5315 (5 U.S.C. 5315) is amended by adding at the end thereof the following: "(92) Members, National Occupational Safety and Health Board."

(c) The principal office of the Board shall be in the District of Columbia. The Board shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the Secretary of the Board.

(d) The Chairman of the Board shall, without regard to the civil service laws, appoint and prescribe the duties of a Secretary of the Board.

(e) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board, and shall appoint, in accordance with the civil service laws, such officers, hearing examiners, agents, attorneys, and employees as are deemed necessary and to fix their compensation in accordance with the Classification Act of 1949, as amended.

(f) Three members of the Board shall constitute a quorum.

(g) The Board is authorized to employ experts, advisers, and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

(h) To carry out its functions under this Act, the Board is authorized to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and administer oaths. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(i) The Board may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Reasonable notice must first be given in writing by the Board or by the party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Board, as provided in subsection (j) of this section. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(j) In the case of contumacy by, or refusal to obey a subpoena served upon any person under this section, the Federal district court for any district in which such person is found or resides or transacts business, upon application by the United States, and after notice to such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and produce documents before the Board, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(k) The Board is authorized to make such rules as are necessary for the orderly transaction of its proceedings.

DUTIES OF THE SECRETARY

Inspections, Investigations, and Reports

SEC. 9. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to question any such employee and to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any such area, workplace, or environment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein.

(b) If the employer, or his representative, accompanies the Secretary or his designated representative during the conduct of all or any part of an inspection, a representative authorized by the employees shall also be given an opportunity to do so.

(c) Each employer shall make, keep, and preserve for such period of time, and make available to the Secretary such record of his activities concerning the requirements of this Act as the Secretary may prescribe by regulation or order as necessary or appropriate for carrying out his duties under this Act.

(d) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(e) In carrying out his responsibilities under this Act, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities and employees of such agency with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or subdivision with or without reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 in section 5332 of title 5, United States Code, including travel time, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence), as authorized by section 5704 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

(3) delegate his authority under subsection (a) of this section to any agency of the Federal Government with or without reimbursement and with its consent and to any State agency or agencies designated by the Governor of the State and with or without reimbursement and under conditions agreed upon by the Secretary and such State agency or agencies.

(f) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be retained with a minimum burden upon employers especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(g) The Secretary shall prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

(h) There are hereby authorized to be appropriated such sums as the Congress shall deem necessary to enable the Secretary to purchase equipment which he determines as necessary to measure the exposure of employees to working environments which might cause cumulative or latent ill effects.

CITATIONS AND SAFETY AND HEALTH APPEALS COMMISSION HEARINGS

Sec. 19. (a) If, upon the basis of an inspection or investigation, the Secretary believes that an employer has violated the requirements of sections 5, 6, or 7(c) of this Act, or subsection (c) of this section, or regulations prescribed pursuant to this Act, he shall issue a citation to the employer unless the violation is de minimis. The citation shall be in writing and describe with particularity the nature of the violation, including a reference to the requirement, standard, rule, order, or regulation alleged to have been violated.

(b) In addition, the citation shall include—

(1) the amount of any proposed civil penalties; and

(2) a reasonable time within which the employer shall correct the violation.

(c) The Secretary shall issue each citation within forty-five days from the occurrence of the alleged violation and for good cause the Secretary may extend such period up to a maximum of ninety days from such occurrence.

(d) If an employer notifies the Secretary that he intends to contest a citation issued under this section, the Secretary shall notify the Safety and Health Appeals Commission of the employer's intention and the Safety and Health Appeals Commission shall afford the employer an opportunity for a hearing as provided in section 11 of this Act. However, if the employer fails to notify the Secretary within fifteen days after the receipt of the citation of his intention to contest the citation issued by the Secretary, the citation shall, on the day immediately following the expiration of the fifteen-day period, become a final order of the Safety and Health Appeals Commission.

(e) Each employer who receives a citation under this section shall prominently post such citation or copy thereof at or near each place a violation referred to in the citation occurred.

(f) No citation may be issued under this section after the expiration of three months following the occurrence of any violation.

(g) Whenever the Secretary compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, and such statement shall be published in the Federal Register.

OCCUPATIONAL SAFETY AND HEALTH APPEALS COMMISSION

SEC. 11. A. ORGANIZATION AND JURISDICTION—

(1) STATUS.—The Occupational Safety and Health Appeals Commission is hereby established as an independent agency in the Executive Branch of the Government. The members thereof shall be known as the Chairman of the Commission and the Commissioners of the Occupational Safety and Health Appeals Commission.

(2) JURISDICTION.—The Commission shall have such jurisdiction as is conferred on it by this Act.

(3) MEMBERSHIP.—(a) The Commission shall be composed of three Commissioners, appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office.

(b) The salary of the Chairman of the Commission shall be equal to that provided for the executive level in section 5314, title 5, United States Code, and the salary of the remaining two Commissioners shall be in accordance with the executive level as provided in section 5315, title 5, United States Code.

(c) The terms of office of the Commissioners shall be as follows: one Commissioner shall be appointed for a term of two years, one Commissioner shall be appointed for a term of four years, and the remaining Commissioner for a term of six years, respectively. Their successors shall be appointed for terms of six years each, except that vacancy caused by death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(d) A Commissioner removed from office in accordance with the provisions of this section shall not be permitted at any time to practice before the Commission.

(4) ORGANIZATION.—(a) The Commission shall have a seal which shall be judicially noticed.

(b) The President may at any time designate one of the three Commissioners to serve as Chairman of the Commission.

(c) A majority of the Commissioners shall constitute a quorum for the transaction of the Commission's business. A vacancy shall not impair its powers nor affect its duties.

(d) The principal office of the Commission shall be in the District of Columbia, but it may sit at any place within the United States giving due consideration to the expeditious conduct of its proceedings and the convenience of the parties.

(5) HEARING EXAMINER.—(a) The Commission may appoint hearing examiners to conduct such business as the Commission may require. Each hearing examiner shall be an attorney at law and shall be selected from the Civil Service Commission list of individuals eligible for selection as administrative hearing examiners.

(b) Except as otherwise provided in this Act, the hearing examiners shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to 5 U.S.C. 5108. Each hearing examiner shall receive compensation at a rate not less than the GS-16 level.

B. PROCEDURE—

(1) **Representation of Parties.**—The Secretary or his delegate shall be represented by the Solicitor of Labor or his delegate before the Commission. The respondent shall be represented in accordance with the rules of practice prescribed by the Commission.

(2) **Rules of Practice, Procedure, and Evidence.**—The proceedings of the Commission shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Commission may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia.

(3) **Serving of Process.**—The mailing by certified mail or registered mail of any pleading, decision, order, notice or process in respect of proceedings before the Commission shall be held sufficient service of such pleading, decision, order, notice or process.

(4) **Administration of Oaths and Procurement of Testimony.**—For the efficient administration of the functions vested in the Commission, any Commissioner of the Commission, the clerk of the Commission, or any other employee of the Commission designated in writing for the purpose by the Chairman of the Commission, may administer oaths, and any Commissioner may examine witnesses and require, by subpoena ordered by the Commission and signed by the Commissioner (or by the Secretary of the Commission or by any other employee of the Commission) when acting under authority from the Secretary of the Commission—

(a) The attendance and testimony of witnesses, and the production of all necessary books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing; or

(b) The taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition, the testimony shall be reduced to writing by the individual taking the deposition, or under his direction and shall then be subscribed by the deponent.

(5) **Witness Fees.**—(a) Any witness summoned or whose deposition is taken shall receive the same fees and mileage as witnesses in courts of the United States.

(b) Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(A) In the case of witnesses for the Secretary or his delegate, such payments shall be made by the Secretary or his delegate out of any moneys appropriated for the enforcement of this Act and may be made in advance.

(B) In the case of any other witnesses, such payments shall be made subject to rules prescribed by the Commission, by the party at whose instance the witness appears or the deposition is taken.

(6) **Hearings.**—Notice and opportunity to be heard upon any proceeding instituted before the Commission shall be given to the respondent and the Secretary or his delegate. If an opportunity to be heard upon the proceedings is given before a hearing examiner of the Commission, neither the respondent nor the Secretary or his delegate shall be entitled to notice and opportunity to be heard before the Commission upon review, except upon a specific order of the Chairman of the Commission. Hearings before the Commission shall be open to the public and the testimony, and, if the Commission so requires, the arguments, shall be stenographically reported. The Commission is authorized to contract for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contracting to the Commission and to others and agencies.

(7) **Review after Denial.**—(a) A report upon any proceeding instituted before the Commission and a decision thereon shall be made as publicly as practicable. The decision shall be made by a Commissioner in consultation with the board of the Commission, and such decision so made shall, when entered, be the decision of the Commission.

(b) It shall be the duty of the Commission to include in its report upon any proceeding its findings of fact or opinion or recommended opinion. The Commission shall report in writing all its findings of fact, opinions, and recommended opinions.

(8) A decision of the Commission dismissing the proceeding shall be considered as its decision.

(9) **Procedure as Regards to the Hearing Examiner.**—(a) A hearing examiner shall make and make a recommendation upon any proceeding instituted before the Commission and any action in connection therewith, referred to such

hearing examiner by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceeding.

(b) The report of the hearing examiner shall become the report of the Commission within thirty days after such report by the hearing examiner unless within such period any Commissioner has directed that such report shall be reviewed by the Commission. Any preliminary action by a hearing examiner which does not form the basis for the entry of the final decision shall not be subject to review by the Commission except in accordance with such rules as the Commission may prescribe. The report of a hearing examiner shall not be a part of the record in any case in which the Chairman directs that such report shall be reviewed by the Commission.

(9) **PUBLICITY OF PROCEEDINGS.**—All reports of the Commission and all evidence received by the Commission, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Commission in any proceeding which has become final the Commission may, upon motion of the respondent or the Secretary or his delegate, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Commission; or the Commission may, on its own motion, make such other disposition thereof as it deems advisable.

(10) **PUBLICATION OF REPORTS.**—The Commission shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Commission therein contained in all courts of the United States and of the several States without any further proof or authorization thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents.

(11) Upon issuance of a citation and notification of the Commission, pursuant to section 10, the Commission shall afford an opportunity for a hearing, and shall issue such orders, and make such decisions, based upon findings of fact, as are deemed necessary to enforce the Act.

C. MISCELLANEOUS PROVISIONS.—

(1) **EMPLOYEES.**—(a) **Appointment and Compensation.** The Commission is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1949 (63 Stat. 954; 5 U.S.C. chapter 21), as amended to fix the compensation of such employees, including a Secretary to the Commission, as may be necessary to efficiently execute the functions vested in the Commission.

(b) **Expenses for Travel and Subsistence.** The employees of the Commission shall receive their necessary traveling expenses, and expenses for subsistence while traveling on duty and away from their designated stations, as provided in the Travel Expense Act of 1949 (63 Stat. 166; 5 U.S.C., chapter 16).

(2) **EXPENDITURES.**—The Commission is authorized to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary to efficiently execute the functions vested in the Commission. All expenditures of the Commission shall be allowed and paid, out of any moneys appropriated for purposes of the Commission, upon presentation of itemized vouchers therefor signed by the certifying officer designated by the Chairman.

(3) **DISPOSITION OF FEES.**—All fees received by the Commission shall be covered into the Treasury as miscellaneous receipts.

(4) **FEE FOR TRANSCRIPT OF RECORD.** The Commission is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

SEC. 12. (a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions of practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.

(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to section 11 of this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) If the Secretary unreasonably fails to petition the court for appropriate relief under this section and any employee is injured thereby either physically or financially by reason of such failure on the part of the Secretary, such employee may bring an action against the United States in the Court of Claims in which he may recover the damages he has sustained, including reasonable court costs and attorney's fees.

(e) In any case where a temporary restraining order is obtained under this section by the Secretary, the court which grants such relief shall set a sum which it deems proper for the payment of such costs, damages, and attorney's fees as may be incurred or suffered by any employer who is found to have been wrongfully restrained or enjoined. In no case shall any employer wrongfully restrained or enjoined be entitled to a recovery for costs, damages, and attorney's fees in excess of the sum set by the court.

JUDICIAL PROCEEDINGS

SEC. 13. (a) (1) Any employer required by an order of the Commission to comply with the standards, regulations, or requirements under this Act, or to pay a penalty, may obtain judicial review of such order by filing a petition for review, within sixty days after service of such order, in the United States court of appeals for the circuit wherein the violation is alleged to have occurred or wherein the employer has its principal office. A copy of the petition shall forthwith be transmitted by the clerk of the court to the Commission and to the Secretary.

(2) The Secretary may also obtain judicial review or enforcement of a decision of the Commission as provided in subsection (1) of this section.

(3) Until the record in a case shall have been filed in a court, as herein provided, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part any finding, order, or rule made or issued by it.

(4) Upon the filing of a petition for review under this section, such court shall have jurisdiction of the proceeding and shall have power to affirm the order of the Commission, or to set aside, in whole or in part, temporarily or permanently, and to enforce such order to the extent that it is affirmed. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order requiring compliance with the terms of the order of the Commission. The commencement of proceedings under this paragraph shall not, unless specifically ordered by the court, operate as a stay of the order of the Commission.

(5) No objection to the order of the Commission shall be considered by the court unless such objection was raised before the Commission or unless there were reasonable grounds for failure to do so. The findings of the Commission as to the facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive, but the court, for good cause shown, may remand the case to the Commission for the taking of additional evidence in such manner and upon such terms and conditions as the court may deem proper. In which event the Commission may make new or modified findings and shall file such findings within 60 days, if supported by substantial evidence on the record considered as a whole, shall be conclusive and its recommendation, if any, for the modification or setting aside of its original order with the return of such additional evidence.

(6) The judgment of the court affirming or setting aside, in whole or in part, any order under this subsection shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(7) An order of the Commission shall become final under the same conditions as an order of the Federal Trade Commission under section 457a2 of title 15, United States Code.

(b) Any interested person affected by the action of the Board in issuing a standard under section 6 may obtain review of such action by the United States Court of Appeals for the District of Columbia by filing in such court within thirty days following the publication of such rule a petition praying that the action of the Board be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Board and thereupon the Board shall certify and file in the court the record upon which the action complained of was issued as provided in section 2112 of title 28, United States Code. Review by the court shall be in accordance with the provisions of section 706 of title 5, United States Code. The court, for good cause shown, may remand the case to the Board to take further evidence, and the Board may thereupon make new or modified findings of fact and may modify its previous action and shall certify to the court the record of the further proceedings. The remedy provided by this subsection for reviewing a standard or rule shall be exclusive. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of a proceeding under this subsection shall not, unless specifically ordered by the court, delay the application of the Board's standards.

(c) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil suit in the name of the United States brought in the Federal district court in the district where the violation is alleged to have occurred or where the employer has its principal office.

(d) The Federal district courts shall have jurisdiction of actions to collect penalties prescribed in this Act and may provide such additional relief as the court deems appropriate to carry out the order of the Occupational Safety and Health Appeals Commission.

REPRESENTATION IN CIVIL LITIGATION

SEC. 14. Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court and the Court of Claims, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General.

CONFIDENTIALITY OF TRADE SECRETS

SEC. 15. All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when essential in any proceeding under this Act. However, any such information shall be recorded and presented off the official public record, and shall be kept and preserved separately.

VARIATIONS, TOLERANCES, AND EXEMPTIONS

SEC. 16. The Board, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as it may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

PENALTIES

SEC. 17. (a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard or rule promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than \$10,000 for each violation.

(b) Any citation for a serious violation of the requirements of section 5 of this Act, of any standard or rule promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall include a proposed penalty of up to \$1,000 for each such violation.

and Any employer who violates the requirements of section 5 of this Act, any standard or rule promulgated pursuant to section 6 of this Act, or regulation promulgated pursuant to this Act, and such violation is specifically determined by the Secretary not to be of a serious nature, the Secretary may include in the citation issued for such violation a proposed penalty of up to \$1,000 for each such violation.

(G) Any employer who violates any order or citation which has become final in accordance with the provision of section 10 of this Act may be assessed a penalty of up to \$1,000 for each such violation. When such violation is of a continuing nature, each day during which it continues shall constitute a separate offense for the purpose of assessing the penalty except where such order or citation is pending review under section 11 of this Act.

(H) Any person who forcibly restrains, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of inspections or investigatory duties under this Act shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years or both. Whoever kills a person while engaged in or on account of the performance of inspecting or investigatory duties under this Act shall be punished by imprisonment for any term of years or for life.

(I) Any employer who violates any of the posting requirements as prescribed under the provisions of this Act, shall be assessed by the Commission a civil penalty of up to \$1,000 for each such violation.

(J) Any person who discharges or in any other manner discriminates against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, shall be assessed a civil penalty by the Commission of up to \$10,000. Such person may also be subject to a fine of not more than \$10,000 or imprisonment of a period not to exceed ten years or both.

(K) The Commission shall have authority to assess and collect all penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(L) For purposes of this section a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes, which have been adopted or are in use, in such place of employment unless the Secretary determines that the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

STATE JURISDICTION AND STATE PLANS

Sec. 18. (a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

(b) Any State which, at any time, desires to assume responsibility for development and enforcement through occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment:

(1) demonstrates a State agency or agency or agencies responsible for administering the plan throughout the State;

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards have the effectiveness of which standards are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to activities which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce;

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 9(a)(1), and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan.

(7) requires employers in the State of make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides, that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 9, 10, 11, and 12 with respect to comparable standards promulgated under section 6, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the State plan, that the criteria set forth in subsection (c) are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the determination referred to in the preceding sentence, the provisions of section 5(b), 9 (except for the purpose of carrying out subsection (c)), 10, 11, and 12, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 10 or 11 before the date of determination.

(f) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition praying that the action of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan to be arbitrary and capricious, the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

Sec. 19. (a) It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof) —

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

(4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a)(3) of this section; and

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7802(a)(2) of title 5, United States Code.

(b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(5) of this section, together with his examinations of and recommendations derived from such reports. The President shall transmit annually to the Senate and the House of Representatives a report of the activities of Federal agencies under this section.

(c) Section 7802(c)(1) of title 5, United States Code, is amended by inserting "agencies" and following: "and of labor organizations representing employees".

(d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a)(3) and (5) of this section, unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

TRAINING AND EMPLOYEE EDUCATION

Sec. 20. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary of Labor, the Board, and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthy working conditions in environments covered by this Act, and to consult with and advise employers and employees and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

GRANTS TO THE STATES

Sec. 21. (a) The Secretary is authorized during the fiscal year ending June 30, 1971, and the two succeeding fiscal years to make grants to the States which have designated a State agency under section 18(c) to carry out (1) an inventory (not more than once) of occupational safety and health programs; (2) in developing State plans under section 18, or (3) in developing plans for

(A) developing systems for the collection of information concerning the nature and frequency of occupational injuries and illnesses;

(B) increasing the experience and effectiveness capabilities of their personnel engaged in occupational safety and health programs; or

- (c) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.
- (b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.
- (c) The Governor of the State shall designate the appropriate State agency, or agencies, for receipt of any grant made by the Secretary under this section.
- (d) Any State agency, or agencies, designated by the Governor of the State, desiring a grant under this section shall submit an application therefor to the Secretary.
- (e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.
- (f) The Federal share for each State grant under subsection (a) or (b) of this section may be up to 90 per centum of the State's total cost. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.
- (g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may be up to 50 per centum of the State's total cost. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.
- (h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to Congress, describing the experience under the program and making any recommendations he may deem appropriate.

ECONOMIC ASSISTANCE TO SMALL BUSINESSES

SEC. 22. (a) Section 7(b) of the Small Business Act, as amended, is amended—

(1) by striking out the period at the end of "paragraph (5)" and inserting in lieu thereof "; and "; and

(2) by adding after paragraph (5) a new paragraph as follows:

"(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in affecting additions to or alterations in the equipment, facilities, or methods or operation of such business in order to comply with the applicable standards promulgated pursuant to section 6 of the Occupational Safety and Health Act or standards adopted by a State pursuant to a plan approved under section 18 of the Occupational Safety and Health Act, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of the Small Business Act, as amended, is amended by striking out "or (5)" after "paragraph (3)" and inserting a comma followed by "(5) or (6)".

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting "7(b) (6), after "7(b) (5)."

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(6) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

RESEARCH AND RELATED ACTIVITIES

SEC. 23. (a) (1) The Secretary of Health, Education, and Welfare, after consultation with the Secretary, the Board, and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Board in order to develop specific plans for such research demonstrations, and experiments as are necessary to produce criteria, including experimental or otherwise, shall conduct (directly or by grants or contracts) testing without identifying toxic substances, enabling the Board to meet its responsibility for the formulation of safety and health standards under this Act; and the Secretary of Health, Education, and Welfare, on the basis of such research demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria will effectuate the purposes of this Act.

(3) The Secretary of Health, Education, and Welfare shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this Act. The Secretary of Health, Education, and Welfare shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

(4) The Secretary of Health, Education, and Welfare shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known toxic substances by generic family or other useful grouping, and the concentrations at which such toxicity is known to occur.

(5) The Board shall respond as soon as possible to a request by any employer or employee for a determination whether or not any substance normally found in a working place has toxic or harmful effects in such concentration, as used or found.

(6) The Secretary of Health, Education, and Welfare is authorized to make inspections and question employers and employees as provided in section 9 of this Act in order to carry out his functions and responsibilities under this section.

(7) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies relating to his responsibilities under this Act. In carrying out his responsibilities under this subsection the Secretary and the Secretary of Health, Education, and Welfare shall cooperate in order to avoid any duplication of efforts under this section.

(8) Information obtained by the Secretary, the Board, and the Secretary of Health, Education, and Welfare under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.

STATISTICS

Sec. 24. (a) In order to further the purposes of this Act, the Secretary shall develop and maintain an effective program of collecting, compiling, and analyzing of occupational safety and health statistics. Such programs may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act.

(b) To carry out his duties under subsection (a) of this section, the Secretary may:

(1) Promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics.

(2) Make grants to State or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics.

(3) Arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(4) The Federal share for any State that under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(5) The Secretary may, with the consent of any State or political subdivision thereof accept and use the services, facilities, and employees of the agencies of such State or political subdivision with or without reimbursement in order to assist him in carrying out his functions under this section.

(6) On the basis of the returns made and kept pursuant to section 9, of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

(7) Arrangements between the Department of Labor and the States pertaining to the collection of occupational safety and health statistics (pursuant to the objectives of this Act) shall be in effect until superseded by grants or contracts made under this Act.

EFFECT ON OTHER LAWS

SEC. 25. (a) Nothing in this Act shall be construed or held to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of, employment.

(b) Nothing in this Act shall apply to working conditions of employees with respect to whom other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021) exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(c) The safety and health standards promulgated under the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.) the Service Contract Act (41 U.S.C. et seq.), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.), are deemed repealed and rescinded on the effective date of corresponding standards promulgated under this Act, as determined by the Secretary of Labor to be corresponding standards.

(d) Nothing in this Act shall apply to any employer who is a contractor or subcontractor for construction, alteration, and/or repair of buildings or works, including painting or decorating in the regular course of his business.

(e) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

(f) Section 2 of the Act of August 9, 1969 (Public Law 91-54; 83 Stat. 96), is hereby amended to read as follows:

"SEC. 2. The first section and section 2 of the Act of August 13, 1962, are each amended by inserting 'and Construction Safety and Health' before 'standards' each time it appears."

(g) Subsection 107 of Public Law 91-54 (83 Stat. 96) is amended to read as follows:

"SEC. 107. (a) (1) It shall be a condition of each contract which is entered into under legislation subject to Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267), and is for construction, alteration, and/or repair, including painting and decorating, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards promulgated by the Secretary by regulation based on proceedings pursuant to section 553 of title 5, United States Code, provided that such proceedings include a hearing of the nature authorized by said section. The Secretary of Labor shall consult with the Advisory Committee on Construction Safety and Health created by subsection (f) and shall give due regard to the Committee's recommendations and information in framing proposed rules or subjects and issues in setting standards in accordance with section 443 of title 5, United States Code.

"(2) Each employer as defined in section 3(6) of the Occupational Safety and Health Act who is a contractor or subcontractor for construction, alteration, and/or repair of buildings or works, including painting and decorating in the regular course of his business, shall comply with construction safety and health standards promulgated under this section."

(h) Subsection (b) of section 107 of Public Law 91-54 (83 Stat. 96) is amended to read as follows:

"(b) (1) The Secretary is authorized to make inspections and investigations pursuant to sections 9 (a), (c), and (d) of the Occupational Safety and Health Act. If upon the basis of inspection or investigation, the Secretary believes that an employer subject to the provisions of section 107(a) (2) has violated any health or safety standard promulgated under section 107(a) of this Act, or has violated the condition required of any contract to which subsection (a) of this section applies, the Secretary shall issue a citation to the employer unless the violation is de minimis. The provisions of section 10 (except subsection (c) hereof) of the Occupational Safety and Health Act shall apply to citations issued under this Act. In issuing citations under this Act, the Secretary shall issue each citation at the earliest possible time from the occurrence of the alleged

violation, but in no event later than forty-five days from the occurrence of the alleged violation except that for good cause the Secretary may extend such period up to a maximum of ninety days from such occurrence. The provisions of section 12 of the Occupational Safety and Health Act shall also apply to this Act.

"2. If after notice and opportunity for hearing, the Commission determines that a violation has occurred of any condition prescribed by this section for a contract of the type described in clause (1) or (2) of section 103(n) of this Act, the governmental agency for which the contract work is done shall have the right to cancel the contract, and to enter into other contracts for the completion of the contract work, charging any additional cost to the original contractor. If after notice and opportunity for hearing, the Commission determines that a violation has occurred of any condition prescribed by this section for a contract of the type described in clause 3 of section 103(n), the governmental agency by which financial guarantee, assistance, or insurance for the contract work is provided shall have the right to withhold any such assistance attributable to the performance of the contract. Section 104 of this Act shall not apply to the enforcement of this section."

"(3) Subsection (2) of section 107 of Public Law 91-54 (83 Stat. 96) is hereby repealed and subsection (d) of that section is redesignated as subsection "(2)" and is amended to read as follows:

"(d) (1) If the Commission determines on the record after an opportunity for hearing that by repeated willful or grossly negligent violations of this Act, a contractor or subcontractor has demonstrated that the provisions of subsection (b) of this section and actions by the Secretary under paragraph (3) of this subsection are not effective to protect the safety and health of his employees, the Commission shall make a finding to that effect and shall, not sooner than thirty days after giving notice of the findings to all interested persons, transmit the name of such contractor or subcontractor to the Comptroller General.

"(2) The Comptroller General shall distribute each name so transmitted to him to all agencies of the Government. Unless the Commission otherwise recommends, no contract subject to this section shall be awarded to such contractor or subcontractor or to any person in which such contractor or subcontractor has a substantial interest until three years have elapsed from the date the name is transmitted to the Comptroller General. If, before the end of such three-year period, the Commission, after affording interested persons due notice and opportunity for hearing, is satisfied that a contractor or subcontractor whose name he has transmitted to the Comptroller General will thereafter comply responsibly with the requirements of this section, the Commission shall terminate the application of the preceding sentence to such contractor or subcontractor (and to any person in which the contractor or subcontractor has a substantial interest). And when the Comptroller General is informed of the Commission's action he shall inform all agencies of the Government thereof.

"(3) Any person aggrieved by an action of the Commission under subsection (d) or (e) of this section may seek a review of such action in the appropriate United States Court of Appeals pursuant to the provisions of section 1134 of the Occupational Safety and Health Act. The Secretary may also obtain judicial review of such determination as provided in sections 1134(e) and 1135 and (d) and section 14 of the Occupational Safety and Health Act."

"(4) Section 107 of Public Law 91-54 (83 Stat. 96) is amended by adding a new subsection "(4)" immediately after the new section "(3)". Subsection (d) of section 107 of Public Law 91-54 (83 Stat. 96) is hereby redesignated as subsection "(5)" and subsection (3) of section 107 of Public Law 91-54 (83 Stat. 96) is accordingly redesignated as subsection "(2)". The new subsection "(4)" shall read as follows:

"(4) Any employee who willfully or repeatedly violates the standards promulgated in the Secretary under section 107(a) of this Act, may be assessed a civil penalty of not more than \$10,000 for each violation.

"(5) Any violation for a series violation of the standards promulgated by the Secretary under section 107(a) of this Act shall include a proposed penalty of 60 per centum for each such violation.

"(6) Any employee who violates the standards promulgated by the Secretary under section 107(a) of this Act and such violation is repeatedly disregarded by the employee and is of a serious nature, the Secretary may include in the citation issued for such a violation a proposed penalty of up to \$1,000 for each such violation.

"(4) Any employer who violates any order or citation which has become final in accordance with the provisions of section 10 of the Occupational Safety and Health Act may be assessed a penalty of up to \$1,000 for each such violation. When such violation is of a continuing nature, each day during which it continues shall constitute a separate offense for the purpose of assessing the penalty except where such order or citation is pending review under section 11 of the Occupational Safety and Health Act.

"(5) Any employer who violates any of the posting requirements, as prescribed in section 10(e) of the Occupational Safety and Health Act, shall be assessed by the Commission a civil penalty of up to \$1,000 for each such violation.

"(6) Any person who discharges or in any other manner discriminates against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, shall be assessed a civil penalty by the Commission of up to \$10,000. Such person may also be subject to a fine of not more than \$10,000 or imprisonment of a period not to exceed ten years, or both.

"(7) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of inspections or investigatory duties under this Act shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years or both. Whoever kills a person while engaged in or on account of the performance of inspecting or investigating duties under this Act shall be punished by imprisonment for any term of years or for life.

"(8) The Commission shall have authority to assess and collect all penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

"(9) For the purpose of this subsection a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the Secretary determines that the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation."

AUDITS

Sec. 26. (a) Each recipient of a grant under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

REPORTS

Sec. 27. Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of occupational safety and health, and any other relevant information, and including any recommendations to effectuate the purposes of this Act.

OBSERVANCE OF RELIGIOUS BELIEFS

Sec. 28. Nothing in this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such medical examination, immunization, or treatment is necessary for the protection of the health or safety of others.

APPROPRIATIONS

Sec. 29. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

Sec. 30. This Act shall take effect one hundred and twenty days after the date of its enactment.

SEPARABILITY

Sec. 31. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

THE SPEAKER. The question is on the amendment.

MR. PERKINS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken: and there were—yeas 229, nays 172, not voting 42, as follows:

[Roll No. 365]

YEAS—229

Abblitt	Clausen,	Galifianakis
Abernethy	Don H.	Gettys
Adair	Clawson, Del.	Goldwater
Alexander	Cleveland	Goodling
Anderson, Ill.	Collier	Griffin
Andrews, Ala.	Collins, Tex.	Gross
Andrews,	Colmer	Grover
N. Dak.	Conable	Gubser
Arends	Conte	Hagan
Ashbrook	Corbett	Hailey
Ayres	Coughlin	Hammer-
Baring	Cramer	schmidt
Beall, Md.	Crane	Hansen, Idaho
Belcher	Cunningham	Harsha
Bell, Calif.	Daniel, Va.	Harvey
Bennett	Davis, Ga.	Hastings
Betts	Davis, Wis.	Henderson
Blackburn	de la Garza	Hogan
Blanton	Dellenback	Hosmer
Bow	Denney	Hull
Bray	Derwinski	Hutchinson
Brinkley	Devine	Ichord
Brock	Dorn	Jarman
Broomfield	Downing	Johnson, Pa.
Brotzman	Duncan	Jonas
Brown, Mich.	Edwards, Ala.	Jones, N.C.
Brown, Ohio	Erlenborn	Jones, Tenn.
Broyhill, N.C.	Esch	Keith
Broyhill, Va.	Eshleman	Klapp
Buchanan	Evins, Tenn.	Kuykendall
Burke, Fla.	Fallon	Kyi
Burleson, Tex.	Findley	Landgrebe
Burton, Utah	Fish	Landrum
Bush	Fisher	Langen
Byrnes, Wis.	Flowers	Latta
Canell	Flynt	Lennon
Caffery	Ford, Gerald R.	Lloyd
Carter	Foreman	Lujan
Casey	Forythe	Lukens
Cederberg	Fountain	McClary
Chambliss	Frellinghuysen	McCloskey
Cheney	Frey	McClure
Clancy	Fuqua	McCulloch

McDonald,
Mich.
McEwen
McKneally
McMillan
MacGregor
Mahon
Mailliard
Mann
Marsh
Martin
Mathias
May
Mayne
Meskill
Michel
Miller, Ohio
Mills
Minshall
Mize
Mizell
Montgomery
Morton
Myers
Natcher
Nelsen
Nichols
Passman
Pelly
Pirnie
Poage
Poff

Preyer, N.C.
Pryor, Ark.
Quie
Quillen
Railsback
Rarick
Reid, Ill.
Reifel
Rhodes
Rivers
Roberts
Robison
Rogers, Fla.
Roth
Roussetot
Ruppe
Ruth
Satterfield
Schadeberg
Scherle
Schmitz
Schneebeli
Schwengel
Scott
Sebelius
Shriver
Sikes
Smith, Calif.
Smith, N.Y.
Snyder
Springer
Stafford

Stanton
Steele
Steiger, Ariz.
Steiger, Wis.
Stephens
Stubblefield
Taft
Talcott
Taylor
Thompson, Ga.
Thomson, Wis.
Ullman
Vander Jagt
Waggonner
Ware
Watson
Watts
Whalley
White
Whitehurst
Whitten
Widnall
Wiggins
Wilson, Bob
Winn
Wold
Wylie
Wyman
Zablocki
Zion
Zwach

NAYS—172

Adams
Addabbo
Albert
Anderson,
Calif.
Anderson,
Tenn.
Annunzio
Ashley
Barrett
Bevill
Biaggi
Biestler
Bingham
Blatnik
Boggs
Boland
Brademas
Brasco
Brooks
Brown, Calif.
Burke, Mass.
Burlison, Mo.
Burton, Calif.
Byrne, Pa.
Carey
Carney
Celler
Chisholm

Clark
Clay
Cohelan
Conyers
Corman
Culver
Daddario
Daniels, N.J.
Delaney
Dent
Diggs
Donohue
Dulski
Dwyer
Eckhardt
Edmondson
Edwards, Calif.
Eilberg
Evans, Colo.
Farbstein
Fascell
Feighan
Flood
Ford,
William D.
Fraser
Friedel
Fulton, Pa.
Fulton, Tenn.

Gallagher
Garmatz
Gaydos
Giammo
Gibbons
Gonzalez
Gray
Green, Pa.
Gude
Halpern
Hamilton
Hamley
Hanna
Hansen, Wash.
Harrington
Hathaway
Hawkins
Hechler, W. Va.
Heckler, Mass.
Helstoski
Hicks
Holifield
Horton
Howard
Jacobs
Johnson, Calif.
Jones, Ala.
Karth
Kastenmeier

Kazen	Nix	Sandman
Kee	Obey	Saylor
Kleczewski	O'Hara	Schouer
Langford	Olsen	Shipley
Lang, La.	O'Neill, Mass.	Sisk
Lang, Md.	Ottlinger	Slack
Lawson, Ind.	Patman	Staggers
McCarthy	Patton	Stead
McDade	Pepper	Stokes
McFall	Perkins	Stratton
Macdonald,	Philbin	Sullivan
Mass.	Pickle	Symington
Mandon	Pike	Thompson, N.J.
Matsunaga	Podell	Tierman
Meads	Price, Ill.	Tanney
Meicher	Pucinski	Udall
Mikva	Randall	Van Deerlin
Miller, Calif.	Rees	Vank
Minish	Reid, N.Y.	Vigerito
Mink	Reuss	Waldie
Mollohan	Riegle	Wampler
Monaghan	Redino	Whalen
Moorhead	Roe	Wilson,
Morgan	Rogers, Colo.	Charles H.
Morse	Rooney, N.Y.	Wolff
Mosher	Rooney, Pa.	Wright
Moss	Rosenthal	Wylder
Murphy, Ill.	Rostenkowski	Yates
Murphy, N.Y.	Ryan	Yatron
Nedzi	St Germain	Young

NOT VOTING—42

Aspinall	Green, Oreg.	Powell
Berry	Griffiths	Price, Tex.
Bodling	Hall	Pureell
Button	Hays	Roudebush
Camp	Hébert	Roybal
Collins, Ill.	Hungate	Skubitz
Cowger	Hunt	Smith, Iowa
Dennis	King	Stuckey
Dickinson	Koch	Teague, Calif.
Dingell	Kyros	Teague, Tex.
Dowdy	O'Konski	Welcker
Edwards, La.	O'Neal, Ga.	Williams
Foley	Pettis	Wyatt
Gilbert	Pollock	

So the amendment was agreed to.

The Clerk announced the following pairs:

On this vote:

Mr. Hébert for, with Mr. Hays against.

Mr. Teague of Texas for, with Mr. Koch against.

Mr. Edwards of Louisiana for, Mr. Foley against.

Mr. Dowdy for, with Mr. Dingell against.

Mr. Stuckey for, with Mr. Roybal against.

Mr. O'Neal of Georgia for, with Mrs. Griffiths against.

Mr. Dennis for, with Mr. Aspinall against.

Mr. Teague of California for, with Mr. Collins of Illinois against.

Mr. Williams for, Mr. Gilbert against.

Mr. Cowger for, with Mr. Powell against.

Mr. King for, with Mrs. Green of Oregon against.

Until further notice:

Mr. Purcell with Mr. Button.
 Mr. Smith of Iowa with Mr. Hall.
 Mr. Hungate with Mr. O'Konski.
 Mr. Wyatt with Mr. Berry.
 Mr. Weicker with Mr. Skubitz.
 Mr. Price of Texas with Mr. Roudebush.
 Mr. Hunt with Mr. Pollock.
 Mr. Dickinson with Mr. Pettis.

Mr. Scheuer changed his vote from "yea" to "nay."

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the committee amendment, as amended, adopted in the Committee of the Whole.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

Mr. PERKINS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 383, nays 5, answered "present" 1, not voting 45, as follows:

[Roll No. 366]

YEAS—383

Abbott	Blackburn	Cederberg
Abernethy	Blanton	Celler
Adair	Blatnik	Chamberlain
Adams	Boggs	Chappell
Addabbo	Boland	Chisholm
Albert	Brademas	Clancy
Alexander	Brasco	Clark
Anderson,	Bray	Clausen,
Calif.	Brinkley	Don H.
Anderson, Ill.	Brock	Clawson, Del.
Anderson,	Brooks	Clay
Tenn.	Broomfield	Cleveland
Andrews, Ala.	Brotzman	Cohelan
Andrews,	Brown, Calif.	Collier
N. Dak.	Brown, Mich.	Collins, Ill.
Annunzio	Brown, Ohio	Collins, Tex.
Arends	Broyhill, N.C.	Colmer
Ashbrook	Broyhill, Va.	Conable
Ashley	Buchanan	Conte
Ayres	Burke, Mass.	Conyers
Baring	Burlison, Mo.	Corbett
Barrett	Burton, Calif.	Corman
Beall, Md.	Burton, Utah	Coughlin
Belcher	Bush	Cramer
Bell, Calif.	Byrne, Pa.	Crane
Bennett	Byrnes, Wis.	Culver
Burke, Fla.	Cabell	Cunningham
Betts	Caffery	Daddario
Bevill	Carey	Daniel, Va.
Biaggi	Carney	Daniels, N.J.
Biester	Carter	Davis, Ga.
Bingham	Casey	

Davis, Wis.	Hagan	McDade
de la Garza	Haley	McDonald, Mich.
Deane	Halpern	McIlwain
Deenelack	Hamilton	McFall
Deoney	Hammerschmidt	McKinnally
Deunis	Hanley	Macdonald, Mass.
Deut	Hanna	MacGregor
Derwinski	Hansen, Idaho	Madden
Devine	Hansen, Wash.	Mahon
Diggs	Harrington	Maidhard
Donahue	Harsha	Mann
Dora	Harvey	Marsh
Downing	Hastings	Martin
Duski	Hathaway	Mathias
Duncan	Hawkins	Matsunaga
Dwyer	Hochler, W. Va.	May
Eckhardt	Hochler, Mass.	Mayne
Edmundson	Helstoski	Meeds
Edwards, Ala.	Henderson	Melcher
Edwards, Calif.	Hicks	Moskell
Ellberg	Hogan	Mikva
Ertenborn	Hoffield	Miller, Calif.
Esch	Horton	Miller, Ohio
Eshleman	Hosmer	Mills
Evans, Colo.	Howard	Minish
Evins, Tenn.	Hull	Mink
Farbstein	Hutchinson	Minshall
Fassell	Ichord	Mize
Feighan	Jacobs	Mizell
Fendley	Jarman	McElahan
Fish	Johnson, Calif.	Monagan
Fisher	Johnson, Pa.	Montgomery
Flood	Jonas	Moorehead
Flowers	Jones, Ala.	Morgan
Flynt	Jones, N.C.	Morse
Ford, Gerald R.	Jones, Tenn.	Mortan
Ford, William D.	Karth	Mosher
Foreman	Kastenmeier	Moss
Forsythe	Kazen	Murphy, N.Y.
Fountain	Kee	Mues
Fraser	Kelch	Natcher
Frelinghuysen	Keppe	Norick
Frey	Kloszynski	Nelson
Friedel	Kuykendall	Nichols
Fulton, Pa.	Kyl	Nix
Fulton, Tenn.	Kyros	Obay
Fuqua	Landrum	O'Hara
Gallagher	Langen	Olsen
Garmatz	Latta	O'Neill, Mass.
Gaydos	Leggett	Passman
Gettys	Lennon	Putman
Gialmo	Levy	Patten
Gibbons	Long, Ia.	Pell
Goldwater	Long, Md.	Pepper
Gonzalez	Lowenstein	Perkins
Gorell	Lujan	Phillips
Gorman, Pa.	Lukens	Platts
Guthrie	McCarthy	Pike
Gunn	McClory	Pirilo
Gunter	McCluskey	Plumer
Guthrie	McClure	Poff
Gude	McCulloch	Preyer, N.C.
		Price, Ill.

Pryor, Ark.	Schneebeck	Udall
Pucinski	Schwengel	Ullman
Quie	Scott	Van Deerlin
Quillen	Sebelius	Vander Jagt
Railsback	Shipley	Vanik
Randall	Shriver	Vigorito
Rees	Sikes	Waggonner
Reid, Ill.	Sisk	Waldie
Reid, N.Y.	Slack	Wampler
Reifel	Smith, Calif.	Ware
Reuss	Smith, N.Y.	Watson
Rhodes	Snyder	Watts
Riegle	Springer	Whalen
Rivers	Stafford	Whalley
Roberts	Staggers	White
Robison	Stanton	Whitehurst
Rodino	Steed	Whitten
Roe	Steele	Widnall
Rogers, Colo.	Steiger, Ariz.	Wiggins
Rogers, Fla.	Steiger, Wis.	Wilson, Bob
Rooney, N.Y.	Stephens	Wilson,
Rooney, Pa.	Stokes	Charles H.
Rosenthal	Stratton	Winn
Rostenkowski	Stubblefield	Wold
Roth	Sullivan	Wolff
Ruppe	Symington	Wright
Ruth	Taft	Wydler
Ryan	Talcott	Wylie
St Germain	Taylor	Wyman
Sandman	Teague, Calif.	Yates
Satterfield	Thompson, Ga.	Yatron
Saylor	Thompson, N.J.	Young
Schadeberg	Thomson, Wis.	Zablocki
Scherle	Tiernan	Zion
Scheuer	Tunney	Zwach

NAYS—5

Burleson, Tex.	McMillan	Schmitz
Landgrebe	Rarick	

ANSWERED "PRESENT"—1

Rousselot

NOT VOTING—45

Aspinall	Gray	Pettis
Berry	Green, Oreg.	Pollock
Bolling	Griffiths	Powell
Bow	Hall	Price, Tex.
Button	Hays	Purcell
Camp	Hébert	Roudebush
Cowger	Hungate	Roybal
Dickinson	Hunt	Skubitz
Dingell	King	Smith, Iowa
Dowdy	Koch	Stuckey
Edwards, La.	Michel	Teague, Tex.
Fallon	Murphy, Ill.	Weicker
Foley	O'Konski	Williams
Gallagher	O'Neal, Ga.	Wyatt
Gilbert	Ottinger	

So the bill was passed.

The Clerk announced the following pairs:

Mr. Hays with Mr. Dickinson.
 Mr. Hébert with Mr. Hunt.
 Mr. Teague of Texas with Mr. King.
 Mr. Dingell with Mr. Pollock.
 Mr. Foley with Mr. Wyatt.
 Mr. Edwards of Louisiana with Mr. Michel.
 Mr. Aspinall with Mr. Williams.
 Mr. Purcell with Mr. Camp.
 Mr. Roybal with Mr. Cowger.
 Mr. Gray with Mr. Skubitz.
 Mr. Stuckey with Mr. Price of Texas.
 Mr. Smith of Iowa with Mr. Bow.
 Mr. Hungate with Mr. Hall.
 Mr. Dowdy with Mr. Berry.
 Mr. Gallagher with Mr. Button.
 Mr. Fallon with Mr. Pettis.
 Mr. Koch with Mr. O'Konski.
 Mr. Murphy of Illinois with Mr. Weicker.
 Mr. O'Neal of Georgia with Mr. Roubush.
 Mrs. Griffiths with Mrs. Green of Oregon.
 Mr. Ottinger with Mr. Gilbert.

The result of the vote was announced as above recorded.
 A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DANITS of New Jersey, Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

CONSIDERATION OF SIMILAR SENATE BILL

Mr. PERKINS, Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, a bill similar to H. R. 16782, just passed by the House, and ask for immediate consideration of the Senate bill.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the Senate bill.

MOTION OFFERED BY MR. PERKINS

Mr. PERKINS, Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Perkins moves to strike out all after the enacting clause of S. 2193 and to insert in lieu thereof the provisions contained in H. R. 16782, as passed, as follows:

Strike out all after the enacting clause, and insert:

That this Act may be cited as the "Occupational Safety and Health Act."

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers, to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful, working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by creating a National Occupational Safety and Health Board to be appointed by the President for the purpose of setting mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Appeals Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "Safety and Health Appeals Commission" means the Occupational Safety and Health Appeals Commission established under section 12 of this Act.

(3) The term "Board" means the National Occupational Safety and Health Board established under section 8 of this Act.

(4) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States, rather than a State as defined in paragraph (8) of this subsection, or between points in the same State but through a point outside thereof.

(5) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(6) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(7) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(8) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(9) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(10) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (a) has been adopted and promulgated by a nationally recognized public or private standards-producing organization possessing technical competence and under a consensus method which involves consideration of the views of interested and affected parties and (b) has been designated by the Board, after consultation with other appropriate Federal agencies.

(11) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.

APPLICABILITY OF THE ACT

Sec. 4. This Act shall apply only with respect to employment performed in a workplace in a State, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, or the Canal Zone, except that this Act shall not apply to any vessel underway on the Outer Continental Shelf lands. The Secretary of the Interior shall, by regulation, provide for medical enforcement of this Act by the courts established for areas in which there are no Federal district courts having jurisdiction.

DUTIES OF EMPLOYERS

Sec. 5. Each employer—

(a) shall furnish to each of his employees employment and a place of employment which are free from any hazards which are readily apparent and are causing or are likely to cause death or serious physical harm to his employees;

(b) shall comply with occupational safety and health standards promulgated under this Act.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Sec. 6. (a) The National Occupational Safety and Health Board established under section 8 of this Act is authorized to promulgate rules prescribing occupational safety and health standards in accordance with sections 556 and 557 of title 5, United States Code.

(b) Without regard to the provisions of sections 553, 554, and 557, title 5, United States Code, the Board shall, as soon as practicable, but in no event later than three years after the date of enactment of this Act, by rule promulgate as an occupational safety and health standard, any national consensus standard or any established Federal standard, unless it determines that the promulgation of such a standard or an occupational safety and health standard would not result in improved safety or health for affected employees. In the event of conflict among such standards, the Board shall promulgate the standard which ensures the greatest protection of the safety or health of the affected employees.

Such national consensus standard or established Federal standard shall take effect immediately upon publication and remain in effect until superseded by a rule promulgated pursuant to subsection (a) of this section.

(c) (1) Whenever the Board promulgates any standard, makes any rule, order, decision, grants any exemption or extension of time, it shall include a statement of the reasons for such action, and such statement shall be published in the Federal Register; and

(2) Whenever a rule issued by the Board differs substantially from an existing national consensus standard, the Board shall include in the rule issued a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(d) Any agency may participate in the rulemaking under this section.

(e) The Secretary of Labor (with respect to safety issues) or the Secretary of Health, Education, and Welfare (with respect to health issues) may submit a request to the Board at any time to establish or modify occupational safety and health standards indicated in the request. Within sixty days from the receipt of the request, the Board shall commence proceedings under this section.

(f) Any interested person may also submit a request in writing to the Board at any time to establish or modify occupational safety and health standards. The Board shall give due consideration to such request and may commence proceedings under this section on the basis of such request.

(g) If, prior to the publication of the rule, an interested person or agency which submitted written data, views, or arguments makes application to the Board for leave to adduce additional data, views, or arguments and such person or agency shows to the satisfaction of the Board that additions may materially affect the result of the rulemaking procedure and that there were reasonable grounds for failure to adduce such additions earlier, the Board may receive and consider such additions.

(h) In determining the priority for establishing standards under this section, the Board shall give due regard to the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Board shall also give due regard to the recommendations of the Secretary and the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

(i) (1) The Board shall provide without regard to requirements of Ch. 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if it determines (A) that employees are exposed to grave danger from exposure to substances determined to be toxic or from new hazards resulting from the introduction of new processes, and (B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Board shall commence a hearing in accordance with sections 556 and 557 of title 5, United States Code, and the standard as published shall also serve as a proposed rule for the hearing. The Board shall promulgate a standard under this paragraph no later than six months after publication of the emergency temporary standard as provided in paragraph (2) of this subsection.

(j) (1) Whenever the Board upon the basis of information submitted to it in writing by an interested person (including a representative of an organization of employers or employees, or a nationally recognized standards-producing organization) or by the Secretary or the Secretary of Health, Education, and Welfare, a State or a political subdivision of a State, or on the basis of information otherwise available to it, determines that a rule should be prescribed under subsection (a) of this section, the Board may appoint an advisory committee as provided for in section 7(c) of this Act, which shall submit recommendations to the Board regarding the rule to be prescribed which will carry out the purposes of this Act, which recommendations shall be published by the Board in the Federal Register, either as part of a subsequent notice of proposed rulemaking or separately.

The recommendations of an advisory committee shall be submitted to the Board within two hundred and seventy days from its appointment, or within such longer or shorter period as may be prescribed by the Board, but in no event may the Board prescribe a period which is longer than one year and three months.

(2) After the submission of such recommendations, the Board shall, as soon as practicable and in any event within four months, schedule and give notice of a hearing on the recommendations of the advisory committee and any other relevant subjects and issues. In the event that the advisory committee fails to submit recommendations within two hundred and seventy days from its appointment (or such longer or shorter period as the Board has prescribed), the Board shall make a proposal relevant to the purpose for which the advisory committee was appointed, and shall within four months schedule and give notice of hearing thereon. In either case, notice of the time, place, subjects, and issues of any such hearing shall be published in the Federal Register thirty days prior to the hearing and shall contain the recommendations of the advisory committee or the proposal made in absence of such recommendation. Prior to the hearing interested persons shall be afforded an opportunity to submit comments upon any recommendations of the advisory committee or other proposal. Only persons who have submitted such comments shall have a right at such hearing to submit oral arguments, but nothing herein shall be deemed to prevent any person from submitting written evidence, data, views, or arguments.

(k) The Board shall within sixty days (where an advisory committee is utilized) or one hundred and twenty days (where no advisory committee is utilized) after completion of the hearing held pursuant to section 6(a) issue a rule prescribing, modifying, or revoking an occupational safety and health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Board determines may be appropriate to insure that affected employers are given an opportunity to familiarize themselves and their employees with the requirements of the standard.

(l) Any affected employer may apply to the Board for a rule or order for an exemption from the requirements of section 5(b) of this Act. Affected employees shall be given notice by the employer of each such application and an opportunity to participate in a hearing. The Board shall issue such rule or order if it determines on the record, after an opportunity for an inspection and a hearing, that the proponent of the exemption has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employees with places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employee, or by the Board on its own motion in the manner prescribed for its issuance at any time after six months after its issuance.

(m) Standards promulgated under this section shall prescribe the posting of such labels or warnings as are necessary to apprise employees of the nature and extent of hazards and of the suggested methods of avoiding or ameliorating them.

ADVISORY COMMITTEES

Sec. 7. (a) There is hereby established a National Advisory Committee on Occupational Safety and Health hereafter in this section referred to as the "Committee", consisting of twelve members appointed by the Secretary four of whom are to be designated by the Secretary of Health, Education, and Welfare, without regard to the civil service laws and composed equally of representatives of management, labor and the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(b) The Committee shall advise, consult with and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(c) The members of the Committee shall be compensated in accordance with the provisions of subsection 8(g) of this Act.

(d) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(e) An advisory committee which may be utilized by the Board in its standard-setting functions under section 6 of this Act shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and also as a member one or more designees of the Secretary of Labor and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Board may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards-producing organizations, but the number of persons so appointed to any advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 8(g) of this Act. The Board shall pay to any State which is the employer of a member of such committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

NATIONAL OCCUPATIONAL SAFETY AND HEALTH BOARD

SEC. 8. (a) The National Occupational Safety and Health Board is hereby established. The Board shall be composed of five members, having a background either by reason of previous training, education, or experience in the field of occupational safety or health, who shall be appointed by the President, by and with the consent of the Senate, and shall serve at the pleasure of the President. One of the five members may be designated at any time by the President to serve as Chairman of the Board.

(b) Subchapter II (relating to Executive Schedule pay rates) of chapter 53 of title V of the United States Code is amended as follows:

(1) Section 5314 (5 U.S.C. 5314) is amended by adding at the end thereof the following: "(54) Chairman, National Occupational Safety and Health Board."

(2) Section 5315 (5 U.S.C. 5315) is amended by adding at the end thereof the following: "(92) Members, National Occupational Safety and Health Board."

(c) The principal office of the Board shall be in the District of Columbia. The Board shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the Secretary of the Board.

(d) The Chairman of the Board shall, without regard to the civil service laws, appoint and prescribe the duties of a Secretary of the Board.

(e) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board, and shall appoint, in accordance with the civil service laws, such officers, hearing examiners, agents, attorneys, and employees as are deemed necessary and to fix their compensation in accordance with the Classification Act of 1949, as amended.

(f) Three members of the Board shall constitute a quorum.

(g) The Board is authorized to employ experts, advisers, and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

(h) To carry out its functions under this Act, the Board is authorized to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and administer oaths. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(f) The Board may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Reasonable notice must first be given in writing by the Board or by the party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Board, as provided in subsection (j) of this section. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(g) In the case of contumacy by, or refusal to obey a subpoena served upon any person under this section, the Federal district court for any district in which such person is found or resides or transacts business, upon application by the United States, and after notice to such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and produce documents before the Board, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(k) The Board is authorized to make such rules as are necessary for the orderly transaction of its proceedings.

DUTIES OF THE SECRETARY

Inspections, Investigations and Reports

SEC. 9. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to question any such employees and to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any such area, workplace, or environment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein.

(b) If the employer, or his representative, accompanies the Secretary or his designated representative during the conduct of all or any part of an inspection, a representative authorized by the employees shall also be given an opportunity to do so.

(c) Each employer shall make, keep, and preserve for such period of time, and make available to the Secretary such record of his activities concerning the requirements of this Act as the Secretary may prescribe by regulation or order as necessary or appropriate for carrying out his duties under this Act.

(d) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if so, and when so ordered, and to give testimony respecting to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(e) In carrying out his responsibilities under this Act, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and employees of such agency with or without reimbursement, and with the consent of any State or political subdivision thereof, except and use the services, facilities, and employees of the agencies of such State or subdivision with or without reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 in section 5332 of title 5, United States Code, including travel-time, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

(3) delegate his authority under subsection (a) of this section to any agency of the Federal Government with or without reimbursement and with its consent and to any State agency or agencies designated by the Governor of the State and with or without reimbursement and under conditions agreed upon by the Secretary and such State agency or agencies.

(f) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(g) The Secretary shall prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under this Act, including rule and regulations dealing with the inspection of an employer's establishment.

(h) There are hereby authorized to be appropriated such sums as the Congress shall deem necessary to enable the Secretary to purchase equipment which he determines as necessary to measure the exposure of employees to working environments which might cause cumulative or latent ill effects.

CITATIONS AND SAFETY AND HEALTH APPEALS COMMISSION HEARINGS

SEC. 10. (a) If, upon the basis of an inspection or investigation, the Secretary believes that an employer has violated the requirements of section 5, 6, or 9(c) of this Act, or subsection (e) of this section, or regulations prescribed pursuant to this Act, he shall issue a citation to the employer unless the violation is de minimis. The citation shall be in writing and describe with particularity the nature of the violation, including a reference to the requirement, standard, rule, order, or regulation alleged to have been violated.

(b) In addition, the citation shall include—

(1) the amount of any proposed civil penalties; and

(2) a reasonable time within which the employer shall correct the violation.

(c) The Secretary shall issue each citation within forty-five days from the concurrence of the alleged violation but for good cause the Secretary may extend such period up to a maximum of ninety days from such occurrences.

(d) If an employer notifies the Secretary that he intends to contest a citation issued under this section, the Secretary shall notify the Safety and Health Appeals Commission of the employer's intention and the Safety and Health Appeals Commission shall afford the employer an opportunity for a hearing as provided in section 11 of this Act. However, if the employer fails to notify the Secretary within fifteen days after the receipt of the citation of his intention to contest the citation issued by the Secretary, the citation shall, on the day immediately following the expiration of the fifteen-day period, become a final order of the Safety and Health Appeals Commission.

(e) Each employer who receives a citation under this section shall prominently post such citation or copy thereof at or near each place a violation referred to in the citation occurred.

(f) No citation may be issued under this section after the expiration of three months following the occurrence of any violation.

(g) Whenever the Secretary compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, and such statement shall be published in the Federal Register.

OCCUPATIONAL SAFETY AND HEALTH APPEALS COMMISSION

SEC. 11.A. ORGANIZATION AND JURISDICTION—

(1) STATUS.—The Occupational Safety and Health Appeals Commission is hereby established as an independent agency in the Executive Branch of the Government. The members thereof shall be known as the Chairman of the Commission and the Commissioners of the Occupational Safety and Health Appeals Commission.

(2) JURISDICTION.—The Commission shall have such jurisdiction as is conferred on it by this Act.

(3) MEMBERSHIP.—(a) The Commission shall be composed of three Commissioners, appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office.

(b) The salary of the Chairman of the Commission shall be equal to that provided for the executive level in section 5314, title 5, United States Code, and the salary of the remaining two Commissioners shall be in accordance with the executive level as provided in section 5315, title 5, United States Code.

(c) The terms of office of the Commissioners shall be as follows: one Commissioner shall be appointed for a term of two years, one Commissioner shall be appointed for a term of four years, and the remaining Commissioner for a term of six years, respectively. Their successors shall be appointed for terms of six years each, except that vacancy caused by death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(d) A Commissioner removed from office in accordance with the provisions of this section shall not be permitted at any time to practice before the Commission.

(4) ORGANIZATION.—(a) The Commission shall have a seal which shall be judicially noticed.

(b) The President may at any time designate one of the three Commissioners to serve as Chairman of the Commission.

(c) A majority of the Commissioners shall constitute a quorum for the transaction of the Commission's business. A vacancy shall not impair its powers nor affect its duties.

(d) The principal office of the Commission shall be in the District of Columbia, but it may sit at any place within the United States giving due consideration to the expeditious conduct of its proceedings and the convenience of the parties.

(5) HEARING EXAMINERS.—(a) The Commission may appoint hearing examiners to conduct such business as the Commission may require. Each hearing examiner shall be an attorney at law and shall be selected from the Civil Service Commission list of individuals eligible for selection as administrative hearing examiners.

(b) Except as otherwise provided in this Act, the hearing examiners shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to 5 U.S.C. 5108. Each hearing examiner shall receive compensation at a rate not less than the GS-16 level.

B. Procedure—

(1) REPRESENTATION OF PARTIES.—The Secretary or his delegate shall be represented by the Solicitor of Labor or his delegate before the Commission. The respondent shall be represented in accordance with the rules of practice prescribed by the Commission.

(2) RULES OF PRACTICE, PROCEDURE, AND EVIDENCE.—The proceedings of the Commission shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Commission may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia.

(3) SERVICE OF PROCESS.—The mailing by certified mail or registered mail at any place, delivery, order, notice or process in respect of proceedings before the Commission shall be held sufficient service of such pleading, document, order, notice, or process.

(4) AUTHORIZATION OF OATHS AND SUBPOENA OF TESTIMONY.—For the official administration of the testimony taken in the Commission any Commissioner of the Commission, the clerk of the Commission, or any other employee of the Commission designated in writing for the purpose by the Chairman of the Commission, may administer oaths, and any Commissioner may examine witnesses and require the sworn affidavits by the Commission and signed by the Commissioner or by the Secretary of the Commission or by any other employee of the Commission when acting under authority from the Secretary of the Commission.

(5) THE SUBPOENA AND DEPOSITION OF WITNESSES, AND THE PRODUCTION OF ALL NECESSARY BOOKS, PAPERS, DOCUMENTS, CORRESPONDENCE, AND OTHER EVIDENCE, FROM ANY PLACE IN THE UNITED STATES AT ANY DESIGNATED PLACE OF HEARING, OF

(b) The taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent.

(5) WITNESS FEES.—(a) Any witness summoned or whose deposition is taken shall receive the same fees and mileage as witnesses in courts of the United States.

(b) Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(A) In the case of witnesses for the Secretary or his delegate, such payments shall be made by the Secretary or his delegate out of any moneys appropriated for the enforcement of this Act and may be made in advance.

(B) In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Commission, by the party at whose instance the witness appears or the deposition is taken.

(6) HEARINGS.—Notice and opportunity to be heard upon any proceeding instituted before the Commission shall be given to the respondent and the Secretary or his delegate. If an opportunity to be heard upon the proceedings is given before a hearing examiner of the Commission, neither the respondent nor the Secretary nor his delegate shall be entitled to notice and opportunity to be heard before the Commission upon review, except upon a specific order of the Chairman of the Commission. Hearings before the Commission shall be open to the public, and the testimony, and, if the Commission so requires, the argument, shall be stenographically reported. The Commission is authorized to contract for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Commission and to others and agencies.

(7) REPORTS AND DECISIONS.—(a) A report upon any proceeding instituted before the Commission and a decision thereon shall be made as quickly as practicable.

The decision shall be made by a Commissioner in accordance with the report of the Commission, and such decision so made shall, when entered, be the decision of the Commission.

(b) It shall be the duty of the Commission to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Commission shall report in writing all its findings of fact, opinions, and memorandum opinions.

(c) A decision of the Commission dismissing the proceeding shall be considered as its decision.

(8) PROCEDURES IN REGARD TO THE HEARING EXAMINERS.—(a) A hearing examiner shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such hearing examiner by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceeding.

(b) The report of the hearing examiner shall become the report of the Commission within thirty days after such report by the hearing examiner unless within such period any Commissioner has directed that such report shall be reviewed by the Commission. Any preliminary action by a hearing examiner which does not form the basis for the entry of the final decision shall not be subject to review by the Commission except in accordance with such rules as the Commission may prescribe. The report of a hearing examiner shall not be a part of the record in any case in which the Chairman directs that such report shall be reviewed by the Commission.

(9) PUBLICITY OF PROCEEDINGS.—All reports of the Commission and all evidence received by the Commission, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Commission in any proceeding which has become final the Commission may, upon motion of the respondent or the Secretary or his delegate, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Commission; or the Commission may, on its own motion, make such other disposition thereof as it deems advisable.

(10) PUBLICATION OF REPORTS.—The Commission shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the Commission therein con-

tained in all courts of the United States and of the several States without any further proof or authentication thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents.

(4) Upon issuance of a citation and notification of the Commission, pursuant to section 10, the Commission shall afford an opportunity for a hearing, and shall issue such orders, and make such decisions, based upon findings of fact, as are deemed necessary to enforce the Act.

C. MISCELLANEOUS PROVISIONS.—

(1) EMPLOYEES.—(a) Appointment and Compensation. The Commission is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1949 (63 Stat. 954, 5 U.S.C. chapter 21), as amended to fix the compensation of such employees, including a Secretary to the Commission, as may be necessary to efficiently execute the functions vested in the Commission.

(b) Expenses for Travel and Subsistence. The employees of the Commission shall receive their necessary traveling expenses, and expenses for subsistence while travelling on duty and away from their designated stations, as provided in the Travel Expense Act of 1949 (63 Stat. 166, 5 U.S.C. chapter 16).

(2) EXPENDITURES.—The Commission is authorized to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals) as may be necessary to efficiently execute the functions vested in the Commission. All expenditures of the Commission shall be allowed and paid, out of any moneys appropriated for purposes of the Commission, upon presentation of itemized vouchers therefor signed by the certifying officer designated by the Chairman.

(3) DISPOSITION OF FEES.—All fees received by the Commission shall be covered into the Treasury as miscellaneous receipts.

(4) FEE FOR TRANSCRIPT OR RECORD.—The Commission is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

Sec. 12. (a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the influence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.

(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to section 11 of this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) If the Secretary unreasonably fails to petition the court for appropriate relief under this section and any employee is injured thereby either physically or financially by reason of such failure on the part of the Secretary, such employee may bring an action against the United States in the Court of Claims in which he may recover the damages he has sustained, including reasonable court costs and attorney's fees.

(e) In any case where a temporary restraining order is obtained under this section by the Secretary, the court which grants such relief shall set a sum which it deems proper for the payment of such costs, damages and attorney's fees as may be incurred or suffered by any employer who is found to have been wrongfully restrained or enjoined. In no case shall any employee wrongfully restrained or enjoined be entitled to a recovery for costs, damages and attorney's fees in excess of the sum set by the court.

JUDICIAL PROCEDURES

SEC. 13. (a) (1) Any employer required by an order of the Commission to comply with the standards, regulations, or requirements under this Act, or to pay a penalty, may obtain judicial review of such order by filing a petition for review, within sixty days after service of such order, in the United States court of appeals for the circuit wherein the violation is alleged to have occurred or wherein the employer has its principal office. A copy of the petition shall forthwith be transmitted by the clerk of the court to the Commission and to the Secretary.

(2) The Secretary may also obtain judicial review or enforcement of a decision of the Commission as provided in subsection (1) of this section.

(3) Until the record in a case shall have been filed in a court, as herein provided, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part any finding, order, or rule made or issued by it.

(4) Upon the filing of a petition for review under this section, such court shall have jurisdiction of the proceeding and shall have power to affirm the order of the Commission, or to set aside, in whole or in part, temporarily or permanently, and to enforce such order to the extent that it is affirmed. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order requiring compliance with the terms of the order of the Commission. The commencement of proceedings under this paragraph shall not, unless specifically ordered by the court, operate as a stay of the order of the Commission.

(5) No objection to the order of the Commission shall be considered by the court unless such objection was urged before the Commission or unless they were reasonable grounds for failure to do so. The findings of the Commission as to the facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive, but the court, for good cause shown, may remand the case to the Commission for the taking of additional evidence in such manner and upon such terms and conditions as the court may deem proper, in which event the Commission may make new or modified findings and shall file such findings (which, if supported by substantial evidence on the record considered as a whole, shall be conclusive) and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence.

(6) The judgment of the court affirming or setting aside, in whole or in part, any order under this subsection shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(7) An order of the Commission shall become final under the same conditions as an order of the Federal Trade Commission under section 45(g) of title 15, United States Code.

(b) Any interested person affected by the action of the Board in issuing a standard under section 6 may obtain review of such action by the United States Court of Appeals for the District of Columbia by filing in such court within thirty days following the publication of such a petition praying that the action of the Board be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Board and thereupon the Board shall certify and file in the court the record upon which the action complained of was issued as provided in section 2112 of title 28, United States Code. Review by the court shall be in accord with the provisions of section 706 of title 5, United States Code. The court, for good cause shown, may remand the case to the Board to take further evidence, and the Board may thereupon make new or modified findings of fact and may modify its previous action and shall certify to the court the record of further proceedings. The remedy provided by this subsection for reviewing a standard or rule shall be exclusive. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of a proceeding under this subsection shall not, unless specifically ordered by the court, delay the application of the Board's standards.

(c) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil suit in the name of the United States brought in the Federal district court in the district where the violation is alleged to have occurred or where the employer has its principal office.

(d) The Federal district courts shall have jurisdiction of actions to collect penalties prescribed in this Act and may provide such additional relief as the court deems appropriate to carry out the order of the Occupational Safety and Health Appeals Commission.

REPRESENTATION IN CIVIL LITIGATION

Sec. 14. Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court and the Court of Claims, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General.

CONFIDENTIALITY OF TRADE SECRETS

Sec. 15. All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when essential in any proceeding under this Act. However, any such information shall be recorded and presented off the official public record, and shall be kept and preserved separately.

VARIATIONS, TOLERANCES, AND EXEMPTIONS

Sec. 16. The Board, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as it may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

PENALTIES

Sec. 17. (a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard or rule promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than \$10,000 for each violation.

(b) Any citation for a serious violation of the requirements of section 5 of this Act, of any standard or rule promulgated pursuant to section 6 of this Act, or any regulations prescribed pursuant to this Act, shall include a proposed penalty of up to \$1,000 for each such violation.

(c) Any employer who violates the requirements of section 5 of this Act, any standard or rule promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, and such violation is specifically determined by the Secretary not to be of a serious nature, the Secretary may include in the citation issued for such violation a proposed penalty of up to \$1,000 for each such violation.

(d) Any employer who violates any order or citation which has become final in accordance with the provision of section 10 of this Act may be assessed a penalty of up to \$1,000 for each such violation. When such violation is of a continuing nature, each day during which it continues shall constitute a separate offense for the purpose of assessing the penalty except where such order or citation is pending review under section 11 of this Act.

(e) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of inspection or investigatory duties under this Act shall be fined not more than \$10,000 or imprisoned not more than three years or both. Whoever in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years or both. Whoever kills a person while engaged in or on account of the performance of inspecting or investigating duties under this Act shall be punished by imprisonment for any term of years or for life.

(f) Any employer who violates any of the posting requirements, as prescribed under the provisions of this Act, shall be assessed by the Commission a civil penalty of up to \$1,000 for each such violation.

(g) Any person who discharges or in any other manner discriminates against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, shall be assessed a civil penalty by the Commission of up to \$10,000. Such person may also be subject to a fine of not more than \$10,000 or imprisonment of a period not to exceed ten years or both.

(h) The Commission shall have authority to assess and collect all penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(i) For purposes of this section a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the Secretary determines that the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

STATE JURISDICTION AND STATE PLANS

SEC. 18. (a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law or any occupational safety or health issue with respect to which no standard is in effect under section 6.

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 9(a)(1), and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 9, 10, 11, and 12 with respect to comparable standards promulgated under section 6, for the period specified in the next sentence. The Secretary may exercise the

authority referred to above until he determines, on the basis of actual operations under the State plan, that the criteria set forth in subsection (c) are being applied, and he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the determination referred to in the preceding sentence, the provisions of sections 5(b), 9 (except for the purpose of carrying out subsection (c)), 10, 11, and 12, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 10 or 11 before the date of determination.

(f) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan or any assistance conditioned thereon, he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan, whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition, praying that the action of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan to be arbitrary and capricious, the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

Sec. 19. (a) It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof) —

(1) provide safe and healthful places and conditions of employment consistent with the standards set under section 6;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

(4) consult with the Secretary with regard to the adequacy of its force and amount of records kept pursuant to subsection (a)(3) of this section; and

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section, such report shall include any report submitted under section 10004(a)(2) of title 5, United States Code.

(b) The Secretary shall report to the President a summary, organized by agency, submitted by him under subsection (a)(5) of this section, together with his recommendations and recommendations derived from such sources. The President shall transmit annually to the Senate and the House of Representatives a report of the activities of Federal agencies under this section.

(c) Section 10004(a)(1) of title 5, United States Code is amended by inserting after "agency" the following: "and of labor organizations representing employees."

(d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a) (3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

TRAINING AND EMPLOYEE EDUCATION

SEC. 20. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary of Labor, the Board, and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct (directly or by grants or contracts) short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act, and to consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

GRANTS TO THE STATES

SEC. 21. (a) The Secretary is authorized during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 18(c) to assist them (1) in identifying their needs and responsibilities in the area of occupational safety and health, (2) in developing State plans under section 18, or (3) in developing plans for—

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency, or agencies, for receipt of any grant made by the Secretary under this section.

(d) Any State agency, or agencies, designated by the Governor of the State, desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may be up to 90 per centum of the State's total cost. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may be up to 50 per centum of the State's total cost. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.

(h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to Congress, describing the experience under the program and making any recommendation he may deem appropriate.

ECONOMIC ASSISTANCE TO SMALL BUSINESSES

Sec. 22. (a) Section 7 (b) of the Small Business Act, as amended, is amended—
 (1) by striking out the period at the end of "paragraph (5)" and inserting in lieu thereof "; and"; and

(2) by adding after paragraph (5) a new paragraph as follows:

"(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in affecting additions to or alterations in the equipment, facilities, or methods of operation of such business in order to comply with the applicable standards promulgated pursuant to section 6 of the Occupational Safety and Health Act or standards adopted by a State pursuant to a plan approved under section 18 of the Occupational Safety and Health Act, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of the Small Business Act, as amended, is amended by striking out "or (5)" after "paragraph (3)" and inserting a comma followed by "(5) or (6)".

(c) Section 140(1) of the Small Business Act, as amended, is amended by inserting "7(b) (6)," after "7(b) (5)."

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b) (6) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

RESEARCH AND RELATED ACTIVITIES

Sec. 23. (a) (1) The Secretary of Health, Education, and Welfare, after consultation with the Secretary, the Board, and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Board in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Board to meet its responsibility for the formulation of safety and health standards under this Act, and the Secretary of Health, Education, and Welfare, on the basis of such records, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this Act.

(3) The Secretary of Health, Education, and Welfare shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created or new technology in occupational safety and health, which may require immediate action beyond that which is otherwise provided for in the operative provisions of this Act. The Secretary of Health, Education, and Welfare shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

(4) The Secretary of Health, Education, and Welfare shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known toxic substances by general, family, or other useful grouping, and the concentrations at which such toxicity is known to occur.

(5) The Board shall respond, as soon as possible, to a request by any employer or employee for a toxicological analysis or any other information promptly found to be a working issue and toxic or harmful effects to such concentration are used or found.

(6) The Secretary of Health, Education, and Welfare is authorized to make investigations and conduct experiments and research as provided in section 9 of this Act in order to carry out his functions and responsibilities under this section.

(7) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies relating to his responsibilities under this Act. In carrying out his responsibilities under this section, the Secretary and the

Secretary of Health, Education, and Welfare shall cooperate in order to avoid any duplication of efforts under this section.

(d) Information obtained by the Secretary, the Board, and the Secretary of Health, Education, and Welfare under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.

STATISTICS

SEC. 24. (a) In order to further the purposes of this Act, the Secretary shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act.

(b) To carry out his duties under subsection (a) of this section, the Secretary may:

(1) Promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics.

(2) Make grants to States or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics.

(3) Arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(c) The Federal share for each State grant under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(d) The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

(e) On the basis of the records made and kept pursuant to section 9(c) of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

(f) Agreements between the Department of Labor and the States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded by grants or contracts made under this Act.

EFFECT ON OTHER LAWS

SEC. 25. (a) Nothing in this Act shall be construed or held to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of, employment.

(b) Nothing in this Act shall apply to working conditions of employees with respect to whom other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021) exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(c) The safety and health standards promulgated under the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), the Service Contracts Act (41 U.S.C. 351 et seq.), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.), are deemed repealed and rescinded on the effective date of corresponding standards promulgated under this Act, as determined by the Secretary of Labor to be corresponding standards.

(d) Nothing in this Act shall apply to any employer who is a contractor or subcontractor for construction, alteration, and or repair of building or works, including painting or decorating in the regular course of his business.

(e) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendation for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

(f) Section 2 of the Act of August 9, 1969 (Public Law 91-54; 83 Stat. 96), is hereby amended to read as follows:

"Sec. 2. The first section and section 2 of the Act of August 13, 1962, are each amended by inserting 'and Construction Safety and Health' before 'standards' each time it appears."

Section 107 of Public Law 91-54 (83 Stat. 96) is amended to read as follows:

(a) (1) It shall be a condition of each contract which is entered into under legislation subject to Reorganization Plan Numbered 14 of 1950 (64 Stat. 2071), and as for construction, alteration, and/or repair including painting and decorating, that no contractor or subcontractor contracting for any part of the contract work shall employ any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary or regulation based on proceedings pursuant to section 10 of title 5, United States Code, provided that such proceedings include a hearing of the nature authorized by said section. The Secretary of Labor shall consult with the Advisory Committee on Construction Safety and Health created by subsection (2) and shall give regard to the Committee's recommendations and information in forming proposed rules or subjects and issues in setting standards in accordance with section 443 of title 5, United States Code.

(2) Each employer as defined in section 3(6) of the Occupational Safety and Health Act who is a contractor or subcontractor for construction, alteration, and/or repair of buildings or works, including painting and decorating in the regular course of his business, shall comply with construction safety and health standards promulgated under this section."

(b) Subsection (c) of section 107 of Public Law 91-54 (83 Stat. 96) is amended to read as follows:

(1) The Secretary is authorized to make inspections and investigations pursuant to sections 9 (a), (c), and (d) of the Occupational Safety and Health Act. If upon the basis of inspection or investigation, the Secretary believes that an employer subject to the provisions of section 107 (a) (2) has violated any health or safety standard promulgated under section 107(a) of this Act, or has violated the condition required of any contract to which subsection (a) of this section applies, the Secretary shall issue a citation of the employer unless the violation is de minimis. The provisions of section 10 (except subsection (c) thereof) of the Occupational Safety and Health Act shall apply to citations issued under this Act. In issuing citations under this Act, the Secretary shall issue each citation at the earliest possible time from the occurrence of the alleged violation but in no event later than forty-five days from the occurrence of the alleged violation except that for good cause the Secretary may extend said period up to a maximum of ninety days from such occurrence. The provisions of section 12 of the Occupational Safety and Health Act shall also apply to this Act.

(2) If, after notice and opportunity for hearing, the Commission determines that a violation has occurred of any condition prescribed by this section for a contract of the type described in clause (1) or (2) of section 107(a) of this Act, the governmental agency for which the contract work is done shall have the right to cancel the contract and to enter into other contracts for the completion of the contract work, charging any additional cost to the original contractor. If, after notice and opportunity for hearing, the Commission determines that a violation has occurred of any condition prescribed by this section for a contract of the type described in clause 3 of section 107(a), the governmental agency in which financial guarantee, assistance, or insurance for the contract work is provided shall have the right to withhold any such assistance attributable to the performance of the contract. Section 104 of this Act shall not apply to the enforcement of this section."

(3) Subsection (c) of section 107 of Public Law 91-54 (83 Stat. 96) is hereby repealed and subsection (d) of that section is redesignated as subsection (2)(c) and is amended to read as follows:

(c) (1) If the Commission determines on the record after an opportunity for hearing that by repeated willful or grossly negligent violations of this Act a contractor or subcontractor has demonstrated that the provisions of subsection (b) of this section and actions by the Secretary under paragraph (2) of this section are not effective to protect the safety and health of his employees, the Commission shall make a finding to that effect and shall, not more than thirty days after giving notice of the findings to all interested persons, transmit the name of such contractor or subcontractor to the Comptroller General.

"(2) The Comptroller General shall distribute each name so transmitted to him to all agencies of the Government. Unless the Commission otherwise recommends, no contract subject to this section shall be awarded to such contractor or subcontractor or to any person in which such contractor or subcontractor has a substantial interest until three years have elapsed from the date the name is transmitted to the Comptroller General. If, before the end of such three-year period, the Commission, after affording interested persons due notice and opportunity for hearing, is satisfied that a contractor or subcontractor whose name he has transmitted to the comptroller General will thereafter comply responsibly with the requirements of this section, the Commission shall terminate the application of the preceding sentence to such contractor or subcontractor (and to any person in which the contractor or subcontractor has a substantial interest); and when the Comptroller General is informed of the Commission's action he shall inform all agencies of the Government thereof.

"(3) Any person aggrieved by an action of the Commission under subsections (b) or (c) of this section may seek a review of such action in the appropriate United States Court of Appeals pursuant to the provisions of section 13(a) of the Occupational Safety and Health Act. The Secretary may also obtain judicial review or seek enforcement as provided in sections 13(a) and 13 (c) and (d) and section 14 of the Occupational Safety and Health Act."

(j) Section 107 of Public Law 91-54 (83 Stat. 96) is amended by adding a new subsection "(d)" immediately after the new section "(c)". Subsection (e) of section 107 of Public Law 91-54 (83 Stat. 96) is hereby redesignated as subsection "(f)" and subsection (f) of section 107 of Public Law 91-54 (83 Stat. 96) is accordingly redesignated as subsection "(g)". The new subsection "(d)" shall read as follows:

"(d) (1) Any employer who willfully or repeatedly violates the standards promulgated by the Secretary under section 197(a) of this Act, may be assessed a civil penalty of not more than \$10,000 for each violation.

"(2) Any citation for a serious violation of the standards promulgated by the Secretary under section 107(a) of this Act shall include a proposed penalty of up to \$1,000 for each violation.

"(3) Any employer who violates the standards promulgated by the Secretary under section 107(a) of this Act and such violation is specifically determined by the Secretary not to be of a serious nature, the Secretary may include in the citation issued for such a violation a proposed penalty of up to \$1,000 for each such violation.

"(4) Any employer who violates any order or citation which has become final in accordance with the provisions of section 10 of the Occupational Safety and Health Act may be assessed a penalty of up to \$1,000 for each such violation. When such violation is of a continuing nature, each day during which it continues shall constitute a separate offense for the purpose of assessing the penalty except where such order or citation is pending review under section 11 of the Occupational Safety and Health Act.

"(5) Any employer who violates any of the posting requirements, as prescribed in section 10(e) of the Occupational Safety and Health Act, shall be assessed by the Commission a civil penalty of up to \$1,000 for each such violation.

"(6) Any person who discharges or in any other manner discriminates against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, shall be assessed a civil penalty by the Commission of up to \$10,000. Such person may also be subject to a fine of not more than \$10,000 or imprisonment of a period not to exceed ten years, or both.

"(7) Any person who forceably assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of inspections or investigatory duties under this Act shall be fined not more than \$5,000 or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years or both. Whoever kills a person while engaged in or on account of the performance of inspecting or investigatory duties under this Act shall be punished by imprisonment for any term of years or for life.

"(8) The Commission shall have authority to assess and collect all penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

For the purpose of this subsection a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from an act or omission which occurs, or from an act or omission which is about to occur, if any of the following practices, means, methods, operations, or processes which have been adopted or are in use in such place of employment unless the Secretary determines that the employer did not and could not with the exercise of reasonable diligence, know of the presence of the violation."

AUDITS

Sec. 26 (b). Each recipient of a grant under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amounts and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

REPORTS

SEC. 27. Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this Act, the progress concerning the achievement of its purposes, the needs and requirements in the field of occupational safety and health, and any other relevant information, and including any recommendations to effectuate the purposes of this Act.

OBSERVANCE OF RELIGIOUS BELIEFS

SEC. 28. Nothing in this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such medical examination, immunization, or treatment is necessary for the protection of the health or safety of others.

APPROPRIATIONS

Sec. 10. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

Sec. 20. This Act shall take effect one hundred and twenty days after the date of its enactment.

SEPARABILITY

Sec. 51. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision, to persons or circumstances other than as to which it is held invalid, shall not be affected thereby.

The motion was agreed to.

The second bill was ordered to be read a third time, was read a third time, and passed.

TITLE AMENDMENT OFFERED BY MR. PERKINS

Mr. Usher. Mr. Speaker, I deliver a little attachment.

The Clerk read as follows:

This Amendment offered by Mr. Thompson, Amended the bill as it is read: "to amend the act authorizing several conditions for working men and women, by authorizing payment of the amounts described under the Act, by granting and encouraging the United States office to secure safe and healthful working conditions, and providing for payment, in connection, education, and training to the end of occupational safety and health, and for other purposes."

The title amendment was agreed to.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 16785) was laid on the table.

APPOINTMENT OF CONFEREES

Mr. PERKINS. Mr. Speaker, I ask unanimous consent that the House insist on its amendments to the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky? The Chair hears none, and appoints the following conferees: Mr. Perkins, Mrs. Green of Oregon, Messrs. Thompson of New Jersey, Dent, Daniels of New Jersey, O'Hara, Hawkins, William B. Ford, Hathaway, Meeds, Burton of California, Gaydos, Ayres, Muie, Scherle, Erlenborn, Steiger of Wisconsin, and Collins of Texas.

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[From the Congressional Record—Senate, Nov. 30, 1970]

OCCUPATIONAL SAFETY AND HEALTH ACT

Mr. YARBOROUGH. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2193.

The presiding officer, Mr. Bayh, laid before the Senate the amendments of the House of Representatives to the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, which were to strike out all after the enacting clause, and insert:

(The text of the House amendment appears at p. 1118.)

Mr. YARBOROUGH. Mr. President, I move that the Senate disagree to the amendments of the House and agree to the request of the House for a conference on the disagreeing votes of the two Houses thereon; and that the chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. Bayh) appointed Mr. Williams of New Jersey, Mr. Yarborough, Mr. Randolph, Mr. Pell, Mr. Nelson, Mr. Mondale, Mr. Eagleton, Mr. Cranston, Mr. Javits, Mr. Prouty, Mr. Saxbe, Mr. Schweiker, and Mr. Dominick conferees on the part of the Senate.

[From the Congressional Record—Senate, Dec. 15, 1970]

ORDER OF BUSINESS

MR. GRAVEL. Mr. President, I yield to the Senator from New York without losing my right to the floor.

THE PRESIDING OFFICER. The Senator from New York is recognized.

THE OCCUPATIONAL HEALTH AND SAFETY ACT OF 1970

MR. JAVITS. Mr. President, last night the conference committee on the Occupational Health and Safety Act of 1970 completed its work at a very late hour. It was a very difficult conference. This bill represents one of the most significant pieces of labor legislation to be considered by Congress in many years.

The result of the conference committee's diligent work—and I am the ranking member of that committee and the subcommittee in handling the matter—during the past week is a most equitable bill, designed to assure as far as possible health and safety in the workplace, yet at the same time to guarantee fair treatment for both the employees and the employers of this country.

I am pleased to announce that I have received a letter from Secretary of Labor Hodgson expressing the administration's full agreement with the conference report, and I am hopeful that this expression of support will do much to insure enactment of the bill into law this year. I ask unanimous consent that Secretary Hodgson's letter be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

U.S. DEPARTMENT OF LABOR,
Washington, December 15, 1970.

HON. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: I wish to convey to you and the members of Congress the Administration's support for the Occupational Health and Safety legislation reported by the Conference Committee last evening.

In my judgment this bill reflects the major positions taken by this Administration during the entire legislative process and represents a significant achievement in the field of health and safety for America's working men and women.

Specifically I am enthusiastic about the significant steps taken by the Congress to provide for fair procedures by means of the establishment of the Occupational Safety and Health Review Commission as an independent adjudicatory body and by the bill's exclusive court procedure for the restraining of conditions constituting an imminent danger to health and safety. In addition, I intend to utilize the expertise made available under the legislation through the use of advisory boards in the establishment of health and safety standards. The important addition of a new Assistant Secretary for Health and Safety in this Administration tends to exploit to its fullest by the appointment of an outstanding executive to fill that post.

The efforts of both Houses of Congress and the constructive compromise struck by their conferees have resulted in meaningful legislation which I am proud to support.

Sincerely,

J. H. HODGSON,
Secretary of Labor.

MR. JAVITS. Mr. President, this is a matter of considerable importance to both bodies which will be considering the conference report.

[From the Congressional Record—Senate, Dec. 16, 1970]

CONSIDERATION OF CONFERENCE REPORT ON OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Mr. ALLEN. I thank the distinguished Senator from North Carolina.

Mr. President, it is the purpose of the junior Senator from Alabama, in holding the floor at this time prior to making a motion, to expedite some of the Senate's business that has been held up up to this time through the extended discussion on the pending amendment. So, at this time, I should like to ask unanimous consent that I might yield to the distinguished Senator from New Jersey (Mr. Williams) for the purpose of calling up a conference report, that I not lose my right to the floor and that my return to a discussion of the pending amendment not be considered as a second speech.

The PRESIDING OFFICER (Mr. Stennis). That contemplates disposition of the conference report?

Mr. ALLEN. I shall return to the floor after disposition of the conference report.

The PRESIDING OFFICER. The Senator from Alabama has made a unanimous-consent request—

Mr. MANSFIELD. Mr. President—

Mr. PROXMIRE. Mr. President, would the Chair repeat the unanimous-consent request?

The PRESIDING OFFICER. Let us have quiet in the Chamber, please.

Mr. MANSFIELD. Mr. President, I would not object. I would reserve the right to object, to state only that the distinguished Senator from New Jersey (Mr. Williams)—

Mr. ALLEN. Mr. President, I would like to add to my request that I shall yield for disposition of the conference report for a time not to exceed 10 minutes.

The PRESIDING OFFICER. (Mr. Stennis). The Senator from Alabama has the floor. He asks unanimous consent that he may yield to the Senator from New Jersey for the purpose of submitting a conference report for a period of not to exceed 10 minutes, and that on the resumption of the speech of the Senator from Alabama it will not be counted as an additional speech. Is there objection to the request of the Senator from Alabama? The Chair hears none, and it is so ordered.

Mr. MANSFIELD. Mr. President, if the Senator from Alabama will yield to me for one-half minute after the conference report is disposed within the allotted time of 10 minutes, without losing his right to the floor, I would assume he intends to so yield without losing his right to the floor to the distinguished senior Senator from Delaware.

Mr. ALLEN. Yes, but I will make that as an additional unanimous-consent request.

Mr. MANSFIELD. That is right.

Mr. ALLEN, Mr. President, I do ask unanimous consent also that I might yield to the distinguished Senator from Montana for not to exceed 5 minutes, without losing my right to the floor and without resumption of my remarks as being considered a second speech.

The PRESIDING OFFICER. Is there objection to the second unanimous-consent request of the Senator from Alabama? The Chair hears none, and it is so ordered.

The Senator from New Jersey is recognized for 10 minutes.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970—CONFERENCE REPORT

Mr. WILLIAMS of New Jersey, Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER (Mr. STENNIS). Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report, which reads as follows:

(The text of the conference report appears at p. 1154.)

Mr. WILLIAMS of New Jersey, Mr. President, first, I want to thank the Senator from Alabama for his accommodation so that I may submit this conference report.

Mr. President, the Senate conferees on S. 2193, the Occupational Safety and Health Act of 1970, have met in five sessions with the conferees from the other body, and have reached agreement on a bill. This measure, which is long overdue, would for the first time provide for a comprehensive program to deal with the urgent problems of safety and health encountered in the workplace by our Nation's citizens.

When this bill was before the Senate 1 month ago, we clearly recognized that a strong Federal program was necessary to deal with the more than 14,000 industrial deaths and 2½ million job-related disabilities that occur each year, as well as the ever increasing exposure of workers to substances whose toxic potential has never been adequately researched. As a consequence, the Senate passed this bill with only three dissenting votes.

In view of the 90 to 8 vote by which the Senate bill was approved, I am pleased to report that the bill agreed on in conference reflects, to a great unusual degree, the wisdom of the Senate, as expressed during our action on this measure.

The conference agreement retains the basic features of the Senate bill, placing in the Secretary of Labor the clear responsibility for promulgating effective safety and health standards, applicable to specific hazards and industries. In exercising this responsibility, the Secretary would utilize and build upon the work already done by private industry and Government in the formulation of standards; and opportunities would be given, through advisory committees, and the hearing procedure, for affected employers and employees to have a voice in the standards-making process.

As in the Senate bill, inspections would be made by the Labor Department, with authority to issue citations requiring the abatement of violations and to propose penalties, where appropriate. The conference agreement also contains the provision for an independent enforcement commission, which was adopted during Senate debate, on motion by Senator Javits. This provision was designed to separate the adjudication of violations from the other functions performed by the Secretary of Labor, in order to provide every assurance that fairness and due process would be fully served.

The conference agreement also contains the Senate bill's provisions which encourage State participation in the effort to bring safe and healthful conditions to the workplace, and which provide the workers and their representatives with an opportunity to participate in the standards-making and enforcement processes.

I might point out that the Senate bill contained a number of provisions that had no counterpart whatever in the House-passed bill. These include Senator Javits' proposals for a National Institute for Occupational Safety and Health to perform the all-important research functions which will be basic to this program's effectiveness, and a national commission to study the problems of workmen's compensation, as well as Senator Dominick's proposal requiring the use of emergency locator beacons on certain small aircraft. All of these provisions remain in the bill agreed upon in conference.

Where the Senate conferees receded to the House, this was also done in accordance with views which had very substantial support in the Senate. I would cite in particular the bill's imminent danger provision. The Senate bill had provided that where an imminent danger was found to exist, the Secretary of Labor could not only go to court to obtain injunctive relief, but could, under certain circumstances, order the withdrawal of employees or closure of the plant for up to 72 hours. An amendment offered on the Senate floor by Senator Saxbe, which would permit all such imminent danger orders to be issued only by a court, failed by merely two votes. Under these circumstances, and in view of the insistence of the House Members on adhering to that portion of their bill which contained a provision similar to the Saxbe amendment, the Senate conferees felt warranted in receding to the House on this issue.

So I believe that in every respect we have been faithful to the wishes of the Senate, and in doing so, have brought back a bill which will be both strong and effective as well as fair and reasonable.

Mr. President, I am gratified that the administration announced its support yesterday of the bill agreed upon by the conference committee. I would also recall President Nixon's earlier remarks on this legislation in which he pointed out that "such a program ought to have been Federal law three generations ago. This was not done, and three generations of American workers have suffered because of this."

Mr. President, the legislation is now before us, and I urge immediate approval of the conference report.

Mr. YARBOROUGH. Mr. President, today we are considering one of the truly great landmark pieces of social legislation in the history of this country. The occupational safety and health bill which has been agreed to by the House and Senate conferees provides the over 80 million American industrial workers with the protection that they so desper-

ately need to insure that they have a safe and healthy place to work. I take special pride in this bill, not only because it was a product of long hours of hard work and investigation by the Senate Labor and Public Welfare Committee, of which I have had the honor to serve as chairman, but also because this is a measure I have worked on for many years. Actually this national industrial safety act is long overdue; for 30 years it has been advocated and urged. At long last this great remedial act is becoming law.

During the 90th Congress, I introduced in the Senate a comprehensive occupational safety and health bill and held extensive hearings on this measure. Those hearings brought to the attention of the American people some startling facts about the conditions that exist in many of the industrial plants of this country. For example, in 1967 alone, there were over 7 million injuries in industrial employment, and of these, 2.2 million work related injuries resulted in either temporary or permanent disabilities. Of these injuries, 6,900 resulted in death. Disregarding for the moment the human element of this pressing problem and looking only at the hard economic facts, industrial accidents and illnesses cost the American economy over \$8 billion in 1967. Ten times more working days were lost as a result of industrial injuries than were lost because of strikes and lockouts. These figures stand as evidence to the truth that this law has been delayed much too long.

At the beginning of the 91st Congress, I joined with Senator Harrison Williams in introducing again in Congress the occupational safety and health bill. Extensive hearings were held on this measure and the members of the Labor and Public Welfare Committee, both Democrats and Republicans, worked diligently to produce a bill that would protect the men and women of this country from the dangers that are present in the workplaces of America. In conference, the Senate conferees fought hard for those provisions which are so necessary if this bill is to be truly effective means of curbing industrial injuries. The bill that came out of the conference stands as a tribute to the hard work of the conferees and particularly Senator Williams, chairman of the Senate Subcommittee on Labor with whom I worked in the conference.

I am extremely proud that I was able to take an active part in fashioning this bill and steering it through conference. If the 91st Congress is remembered for nothing else than this bill, it will surely be recorded as one of the most productive legislative sessions in the history of this country. Contrary to the views expressed by the distinguished minority leader of the Senate, this occupational safety and health bill makes this session of Congress an unmitigated success.

The key features of this bill are:

First, it will authorize the establishment of health and safety standards;

Second, it provides the Secretary of Labor with the authority to enforce these standards; and

Third, it authorizes sanctions to be used against those companies and employers who fail to meet these standards.

This is not a punitive measure but rather a strong and workable bill which deserves the support of all people who are concerned with industrial safety. Above all else, this bill stands as proof to the American

people that Congress can respond in a constructive way to urgent needs. I am proud to have been a part of the fight for this measure and I urge the Senate to unanimously adopt the conference report.

Mr. PROUTY. Mr. President, I am one of the conferees appointed by the Senate to the joint conference on the occupational health and safety bill. Although I have misgivings over some of the provisions contained in the conference report, I have concluded that its overall effect will be beneficial and I shall vote for its adoption.

The original bills introduced in both bodies provided that the Secretary of Labor would promulgate all health and safety standards and would also be responsible for deciding appeals from employers who contested violations found or penalties assessed by inspectors employed by the Department of Labor.

The conference report, Mr. President, adopts provisions contained in both the House- and Senate-passed bills establishing an independent Commission to review all contested cases involving violations found or penalties assessed by the Secretary of Labor. The Commission's order in turn is subject to judicial review in an appropriate U.S. court of appeals.

The conference report also eliminates the authority granted to the Secretary of Labor by the Senate bill to partially or entirely arbitrarily shut down the operations of an employer on the grounds of imminent danger. Rather, it adopts the House provision requiring that the Secretary obtain an order from a U.S. district court if he concludes that a withdrawal order is warranted.

In addition, the conference report retains Senate language providing that where a withdrawal order is issued it must provide that sufficient numbers of employees may remain in the area in order to shut down the operation in an orderly and efficient manner. This provision is of primary importance to industries which utilize continuous flow operations.

While civil penalties are provided for willful violations, the conference report also eliminates criminal penalties for willful violations except where the violation results in the death of an employee.

I regret, Mr. President, that the conference report does not provide for some type of board to promulgate health and safety standards. The Steiger substitute amendment adopted in the House by a plurality of 48 votes provided for an independent board composed of experts in the field of occupational health and safety. The Senate rejected this concept by two votes and left this authority completely in the hands of the Secretary of Labor.

In my opinion, because of the substantial support for the board concept expressed by Congress, I believe the conferees would be on much more solid ground if we had agreed on some type of board for the promulgation of standards, even though it might have been a board making recommendations to the Secretary of Labor rather than independently promulgating standards.

I also regret that we did not reach some compromise with respect to the Construction Safety Act of 1969, Public Law 91-54. The House-passed bill contained provisions acceptable to both the building trade unions and the construction industry, continuing the Construction Safety Act with jurisdiction over the entire construction industry. In

affect, the conference report now places the construction industry under the present bill while leaving the Secretary of Labor the option of seeking remedies under either this bill or the Construction Safety Act.

It was impossible to consider compromises in either of these two areas during the conference, however, as the House conferees receded on both provisions before counterproposals could be made.

There are also other substantive provisions in the conference report which cause me to have some reservations. There are provisions here that officials in my state of Vermont dislike, and I know that there are also provisions which the administration would have preferred to see resolved in a different manner.

However, we are all, I believe, for health and safety and I strongly support laws to protect the working men and women of our country.

I have studied the proposed legislation which will become law if the conference report is approved very carefully, Mr. President, and I have reached the judgment that despite the defects I see, the overall thrust of this new law will be beneficial to the workers of our Nation and fair to our industries. In reaching this conclusion, I have given substantial weight to the opinion of Secretary of Labor Hodgson who has informed us that he believes the conference report "represents a significant achievement in the field of health and safety for America's working men and women," and that the adoption of the conference's result will result "in meaningful legislation."

Accordingly, I support the conference report and shall vote for its adoption.

The PRESIDING OFFICER (Mr. Mondale). The question is on agreeing to the conference report.

The report was agreed to.

Mr. EAGLETON. Mr. President, it is likely that the 91st Congress will be long remembered as the Congress in which an enormously heightened increase in concern for environmental problems became manifest. We have dealt with, and are still considering, problems arising from the disposal of wastes which have heretofore been allowed to defile the earth and its air and waters.

It is appropriate that we deal as well with the environment of the working place, where over 80 million Americans spend their days. The hazards that imperil the safety and health of the worker are many and varied. Some diseases which began to plague workers who first gathered in factories in the industrial revolution are still with us. In recent years, new processes, new techniques, and new sources of energy have greatly expanded the list of hazards that workers face.

The Occupational Safety and Health Act will go a long way toward eliminating these hazards and reducing the extraordinary number of workers who are, daily, disabled or killed on the job.

As one who has worked with this bill from the Labor Subcommittee, through the full Labor and Public Welfare Committee, on the Senate floor and in the conference committee, I have no hesitation in giving my full support to the final product expressed in this conference report. I think it is fair to say that this bill accomplishes the purpose that we set for ourselves: to greatly improve the health and safety of the workplace without placing unnecessary burdens on employers.

The costs that will be incurred by employers in meeting the standards of health and safety to be established under this bill are, in my view, reasonable and necessary costs of doing business. Whether we, as

individuals, are motivated by simple humanity or by simple economics, we can no longer permit profits to be dependent upon an unsafe or unhealthy worksite.

I want to pay special tribute to the distinguished junior Senator from New Jersey (Mr. Williams) whose dedication, intelligence, and energy made him the single person most responsible for this legislative accomplishment. In so doing, however, I would not want to overlook the work of the able senior Senator from New York (Mr. Javits) who also devoted himself untiringly to the enactment of this bill.

Finally, I should point out that our work will be no more than an empty gesture unless this legislation is adequately funded and enforced. Thus, I am extremely pleased that the Secretary of Labor, who will be chiefly responsible for implementation of the bill, has put behind him such differences as he may have had with some of its provisions and announced his endorsement of it. I hope this presages a vigorous enforcement effort by every member of this administration charged with responsibilities for occupational safety and health by the bill.

Mr. JAVITS subsequently said: Mr. President, I am the ranking minority member of the Committee on Labor and Public Welfare and with the Senator from New Jersey (Mr. Williams) negotiated the occupational health and safety plan which the Senate has approved. I wish to express my gratification and thanks to the Senate. I am also gratified by the Secretary of Labor's support for the conference report, and that I have had a part in shaping the provisions of this legislation.

In my opinion, with this bill we shall begin finally to achieve a reduction in the industrial carnage which now claims the lives of over 14,000 workers and injures over 2 million other workers each year. It would have been a tragedy of the first order if the differences between labor and management which arose over the provisions of this bill had operated to prevent its enactment. Happily, the conference committee was able to come to an agreement, and the bill as it is now before the Senate is in my judgment fair to both management and labor.

From a personal standpoint, I am particularly pleased that the bill reported by the conference retained three amendments which I sponsored. First, the bill provides for an independent three-man commission to adjudicate enforcement cases. Second, the bill establishes a new National Institute for Occupational Safety and Health in HEW to conduct the enormous amount of research which will have to be done under this law. Third, the bill provides for a 15-member commission to study existing State workmen's compensation laws, many of which are woefully inadequate, and report back to the Congress with recommendations by July 31, 1972.

Mr. President, I have served for many years on the Senate Labor and Public Welfare Committee and since 1964 have been the ranking minority member of the committee and its Subcommittee on Labor. During that period the committee has dealt with legislation of great benefit to American workers. The bill before us today, however, will, in my judgment, mark the greatest single contribution to the health and welfare of American workers that has yet been made by Congress. Also, the Senator from New Jersey (Mr. Williams) has properly earned the gratitude of all Americans for his unflagging dedication and leadership with respect to this legislation, and I am very pleased to have been associated with him in that effort.

Finally, Mr. President, I ask unanimous consent that an editorial from today's New York Times in support of the conference report be printed in the Record.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

SAFETY ON THE JOB

On the official record alone, the toll of industrial deaths and disabling accidents is staggering. But Government statistics, however comprehensive, do not begin to measure the full cost in shortened lives and debilitating illness of the health hazards that workers encounter every day in factories, mills and other places of work.

Senate-House conferees have now reached agreement on a strong occupational health and safety bill, based primarily on the excellent measure originally passed by the Senate rather than on the much more ineffectual House bill. The result will be a system of industrial health protection which, when approved by President Nixon, will strongly reinforce the country's social defenses.

[From the Congressional Record—House, Dec. 16, 1970]

**CONFERENCE REPORT ON S. 2193, OCCUPATIONAL
SAFETY AND HEALTH ACT OF 1970**

Mr. Perkins submitted the following conference report and statement on the bill (S. 2193), to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women ; to assist and encourage States to participate in efforts to assure such working conditions ; to provide for research information, education, and training in the field of occupational safety and health, and for other purposes.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

DECEMBER 16, 1970.—Ordered to be printed

Mr. PERKINS, from the committee on conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 2193]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following: *That this Act may be cited as the "Occupational Safety and Health Act of 1970".*

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) *The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.*

(b) *The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—*

(1) *by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to*

institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "Commission" means the Occupational Safety and Health Review Commission established under this Act.

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States other than the Trust Territory of the Pacific Islands, or between points in the same State but through a point outside thereof.

(4) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(6) The term "employee" means an employer who is employed in a business of his employer which affects commerce.

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (1) has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect or contained in any Act of Congress in force on the date of enactment of this Act.

(11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health established under this Act.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this Act.

(14) The term "Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this Act.

APPLICABILITY OF THIS ACT

SEC. 4. (a) This Act shall apply with respect to employment performed on a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no U. S. district courts having jurisdiction.

(b)(1) Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-742, Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.) are superseded on the effective date of corresponding standards, promulgated under this Act, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this Act shall be deemed to be occupational safety and health standards issued under this Act, as well as under such other Acts.

(3) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

(4) Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

DUTIES

SEC. 5. (a) Each employer—

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

SEC. 6. (a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period not to exceed six months as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the substance of the standard and of its terms and that employers affected are given an opportunity to disseminate the same and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall on the standard which must adequately assure, to the extent feasible, on the basis

of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for a temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative.

posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(6) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health, Education, and Welfare certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health, Education, and Welfare designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(9) (1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard

promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6(b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

ADVISORY COMMITTEES; ADMINISTRATION

SEC. 7. (a)(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members

appointed by the Secretary, four of whom are to be designated by the Secretary of Health, Education, and Welfare, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and composed of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 5107 of title 5, United States Code.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(b) An advisory committee may be appointed by the Secretary to assist him in his standard-setting functions under section 6 of this Act. Each such committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards producing organizations, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 5107 of title 5, United States Code. The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

(c) In carrying out his responsibilities under this Act, the Secretary is authorized to

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement, and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of title 5, United States Code, including traveltime, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 8. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) (1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-

related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or **transfer to another job.**

(3) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (c), for the purpose of aiding such inspection. Where there is no authorized employer representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f) (1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear on such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing at such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they

have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(g) (1) The Secretary and Secretary of Health, Education, and Welfare are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

(2) The Secretary and the Secretary of Health, Education, and Welfare shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

CITATIONS

SEC. 9. (a) If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(b) Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Secretary, at or near each place a violation referred to in the citation occurred.

(c) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

PROCEDURE FOR ENFORCEMENT

SEC. 10. (a) If, after an inspection or investigation, the Secretary issues a citation under section 9(a), he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 17 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time, the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(b) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Secretary shall notify the

employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification of the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(c) If an employer notifies the Secretary that he intends to contest a citation issued under section 11(a) or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days of the issuance of a citation under section 11(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing in accordance with section 554 of title 5, United States Code, but without regard to subsection (d) (3) of such section. The Commission shall then either issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives at affected employees an opportunity to participate as parties to hearings under this subsection.

JUDICIAL REVIEW

SEC. 11 (a). Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 10 may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing the court shall have jurisdiction of the proceedings and of the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the plaintiff's testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission, and remanding to the court the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No disposition that has not been acted upon by the Commission shall be considered

by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

(b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 10, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 17, in addition to invoking any other available remedies.

(c)(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction,

in cases shown to restrain violations of paragraph (1) of this subsection shall not be appropriate relief, including rehearing or reinstatement of the employee to his former position with back pay.

(1) Within 60 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SEC. 12. (a) The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who, by reason of training, education, or experience are qualified to carry out the functions of the Commission under this Act. The President shall designate one of the members of the Commission to serve as Chairman.

(b) The terms of members of the Commission shall be six years except that (1) the members of the Commission first taking office shall serve, as designated by the President at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) (1) Section 5311 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(2) Chairman, Occupational Safety and Health Review Commission."

(2) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(2) Members, Occupational Safety and Health Review Commission."

(d) The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

(e) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and to insure cooperation or coordination with the provisions of chapter 41 and subchapter III of chapter 53 of title 5, United States Code, relating to compensation and General Schedule pay rates. That amount, removal and compensation of hearing examiners shall be as provided under sections 5305, 5311, 5307, and 5307 of title 5, United States Code.

(f) For the purpose of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action may be taken only on the affirmative vote of at least two members.

(g) Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly trans-

action of its proceedings. Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

(h) The Commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(i) For the purpose of any proceeding before the Commission, the provisions of section 11 of the National Labor Relations Act (29 U.S.C. 161) are hereby made applicable to the jurisdiction and powers of the Commission.

(j) A hearing examiner appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such hearing examiner by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the hearing examiner shall become the final order of the Commission within thirty days after such report by the hearing examiner, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

(k) Except as otherwise provided in this Act, the hearing examiners shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code. Each hearing examiner shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

SEC. 13. (a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

REPRESENTATION IN CIVIL LITIGATION

SEC. 14. Except as provided in section 518, a, of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General.

CONFIDENTIALITY OF TRADE SECRETS

SEC. 15. All information reported to or otherwise obtained by the Secretary or his representative in connection with any aspect of or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

VARIATIONS, TOLERANCES, AND EXEMPTIONS

SEC. 16. The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

PENALTIES

SEC. 17. (a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than \$10,000 for each violation.

(b) Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to \$1,000 for each such violation.

(c) Any employer who has received a citation for a violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of regulations prescribed pursuant to this Act, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$1,000 for each such violation.

(d) Any employer who fails to correct a violation for which a citation has been issued under section 9(a) within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than \$1,000 for each day during which such failure or violation continues.

(e) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$5,000 or by imprisonment for not more than one year, or by both.

(f) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document required or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(h) (1) Section 1114 of title 18, United States Code, is hereby amended by striking out "designated by the Secretary of Health, Education, and Welfare to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act" and inserting in lieu thereof "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions".

(2) Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111, shall be punished by imprisonment for any term of years or for life.

(i) Any employer who violates any of the posting requirements as prescribed under the provisions of this Act, shall be assessed a civil penalty of up to \$1,000 for each violation.

(j) The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which

exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(c) Civil penalties owed under this Act shall be paid to the Secretary or deposited into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

STATE JURISDICTION AND STATE PLANS

SEC. 18. (a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a provision for advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

- (8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.
- (d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.
- (e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 8, 9, 10, 13, and 17 with respect to comparable standards promulgated under section 6, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the State plan, that the criteria set forth in subsection (c) are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the determination referred to in the preceding sentence, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.
- (f) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.
- (g) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.
- (h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

Sec. 19. (a) It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof):

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

(4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a) (3) of this section; and

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7702(c)(2) of title 5, United States Code.

(b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a) (5) of this section, together with his evaluations of and recommendations derived from such reports. The President shall transmit annually to the Senate and the House of Representatives a report of the activities of Federal agencies under this section.

(c) Section 7702(c)(1) of title 5, United States Code, is amended by inserting after "agencies" the following: "and of labor organizations representing employees".

(d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a) (3) and (5) of this section, unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

RESEARCH AND RELATED ACTIVITIES

Sec. 20. (a) (1) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct directly or by grants or contracts research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches to dealing with occupational safety and health problems.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce data, including a clear identification of substances, causing the Secretary to bear his responsibility for the formulation of safety and health standards under this Act, and the Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this Act.

(3) The Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

(4) The Secretary of Health, Education, and Welfare shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided or in the operating provisions of this Act. The Secretary of Health, Education, and Welfare shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

(5) The Secretary of Health, Education, and Welfare, in order to comply with his responsibilities under paragraph (2), and in order to develop needed information regarding potentially toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which the Secretary of Health, Education, and Welfare reasonably believes may endanger the health or safety of employees. The Secretary of Health, Education, and Welfare also is authorized to establish such programs of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the susceptibility of employees to such illnesses. Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. Upon the request of any employer who is required to measure and record exposure of employees to substances or physical agents as provided under this subsection, the Secretary of Health, Education, and Welfare shall furnish full financial or other assistance to such employer for the purpose of defraying any additional expenses incurred by him in carrying out the measuring and recording as provided in this subsection.

(6) The Secretary of Health, Education, and Welfare shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known toxic substances by generic family or other useful grouping, and the concentrations at which such toxicity is known to occur. He shall determine following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found; and shall submit such determination both to employers and affected employees as soon as possible. If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 6, the Secretary of Health, Education, and Welfare shall immediately submit such determination to the Secretary, together with all pertinent criteria.

7. Within two years of enactment of this Act and annually thereafter, the Secretary of Health, Education, and Welfare shall conduct and publish annual general studies of the effect of chronic or low-level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of physical capacity or ability.

(b) The Secretary of Health, Education, and Welfare is authorized to make inspections and question employers and employees as provided in sections 8 of this Act in order to carry out his functions and responsibilities under this section.

(c) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies relating to his responsibilities under this Act. In carrying out his responsibilities under this subsection, the Secretary shall cooperate with the Secretary of Health, Education, and Welfare in order to avoid any duplication of efforts under this section.

(d) Information obtained by the Secretary and the Secretary of Health, Education, and Welfare under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.

(e) The functions of the Secretary of Health, Education, and Welfare under this Act shall, to the extent feasible, be delegated to the Director of the National Institute for Occupational Safety and Health established by section 22 of this Act.

TRAINING AND EMPLOYEE EDUCATION

Sec. 21. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts, (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall (1) provide for the establishment and supervision of programs for the education and training of employers and employees on the recognition, avoidance, and prevention of unsafe or unhealthy working conditions in employments covered by this Act, and (2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

Sec. 22. (a) It is the purpose of this section to establish a National Institute for Occupational Safety and Health in the Department of Health, Education, and Welfare in order to carry out the policy set forth in section 7 of this Act and to perform the functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.

(b) There is hereby established in the Department of Health, Education, and Welfare a National Institute for Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the

Secretary of Health, Education, and Welfare, and who shall serve for a term of six years unless previously removed by the Secretary of Health, Education, and Welfare.

(c) *The Institute is authorized to—*

(1) *develop and establish recommended occupational safety and health standards; and*

(2) *perform all functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.*

(d) *Upon his own initiative, or upon the request of the Secretary or the Secretary of Health, Education, and Welfare, the Director is authorized (1) to conduct such research and experimental programs as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and (2) after consideration of the results of such research and experimental programs make recommendations concerning new or improved occupational safety and health standards. Any occupational safety and health standard recommended pursuant to this section shall immediately be forwarded to the Secretary of Labor, and to the Secretary of Health, Education, and Welfare.*

(e) *In addition to any authority vested in the Institute by other provisions of this section, the Director, in carrying out the functions of the Institute, is authorized to—*

(1) *prescribe such regulations as he deems necessary governing the manner in which its functions shall be carried out;*

(2) *receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;*

(3) *receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)), money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;*

(4) *in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;*

(5) *obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;*

(6) *accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;*

(7) *enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or any other provision of law relating to competitive bidding;*

(8) *make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and*

(9) *make other necessary expenditures.*

(f) *The Director shall submit to the Secretary of Health, Education, and Welfare, to the President, and to the Congress an annual report of the operations of the Institute under this Act, which shall include a detailed*

statement of all private and public funds received and expended by it, and such recommendations as the Director deems appropriate.

GRANTS TO THE STATES

Sec. 23. (a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 18 to assist them—

(1) in identifying their needs and responsibilities in the area of occupational safety and health;

(2) in developing State plans under section 18, or

(3) in developing plans for—

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(d) Any State agency designated by the Governor of the State desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may not exceed 50 per centum of the total cost of the application. In the case of the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may not exceed 50 per centum of the total cost to the State of such a program. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.

(h) Prior to June 30, 1972, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate.

STATISTICS

Sec. 24. (a) In order to further the purposes of this Act, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall develop and maintain an effective program of collection, compilation,

and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act. The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(b) To carry out his duties under subsection (a) of this section, the Secretary may—

(1) promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;

(2) make grants to States or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics; and

(3) arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(c) The Federal share for each grant under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(d) The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

(e) On the basis of the records made and kept pursuant to section 8(c) of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

(f) Agreements between the Department of Labor and States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded by grants or contracts made under this Act.

AUDITS

SEC. 25. (a) Each recipient of a grant under this Act shall keep such records as the Secretary or the Secretary of Health, Education, and Welfare shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary or the Secretary of Health, Education, and Welfare, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

ANNUAL REPORT

Sec. 26. Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the President for transmission to the Congress a report upon the subject matter of this Act, the progress toward achievement of the purpose of this Act, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports shall include information regarding occupational safety and health standards, and criteria for such standards developed during the preceding year; evaluation of standards and/or criteria previously developed under this Act, defining areas of emphasis for new criteria and standards; an evaluation of the degree of observance of applicable occupational safety and health standards; and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and non-governmental sponsorship; an analysis of occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of cooperative efforts undertaken between Government agencies and other interested parties in the implementation of this Act during the preceding year; a progress report on the development of an adequate supply of trained manpower in the field of occupational safety and health, including estimates of future needs and the efforts being made by Government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this Act.

NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

Sec. 27. (a) (1) The Congress hereby finds and declares that—

A) the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment, and that the full protection of American workers from substantial injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation; and

(2) in recent years serious questions have been raised concerning the adequacy and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

(3) The purpose of this section is to authorize an effective study and report on evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt and equitable system of compensation for injury or death arising out of or in the course of employment.

(4) There is hereby established a National Commission on State Workmen's Compensation Laws.

(c) (1) *The Workmen's Compensation Commission shall be composed of fifteen members to be appointed by the President from among members of State workmen's compensation boards, representatives of insurance carriers, business, labor, members of the medical profession having experience in industrial medicine or in workmen's compensation cases, educators having special expertise in the field of workmen's compensation, and representatives of the general public. The Secretary, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare shall be ex officio members of the Workmen's Compensation Commission.*

(2) *Any vacancy in the Workmen's Compensation Commission shall not affect its powers.*

(3) *The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Workmen's Compensation Commission.*

(4) *Eight members of the Workmen's Compensation Commission shall constitute a quorum.*

(d) (1) *The Workmen's Compensation Commission shall undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation. Such study and evaluation shall include, without being limited to, the following subjects: (A) the amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon, (B) the amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician, (C) the extent of coverage of workers, including exemptions based on numbers or type of employment, (D) standards for determining which injuries or diseases should be deemed compensable, (E) rehabilitation, (F) coverage under second or subsequent injury funds, (G) time limits on filing claims, (H) waiting periods, (I) compulsory or elective coverage, (J) administration, (K) legal expenses, (L) the feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws, (M) the resolution of conflict of laws, extraterritoriality and similar problems arising from claims with multistate aspects, (N) the extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist, (O) the relationship between workmen's compensation on the one hand, and old-age, disability, and survivors insurance and other types of insurance, public or private, on the other hand, (P) methods of implementing the recommendations of the Commission.*

(2) *The Workmen's Compensation Commission shall transmit to the President and to the Congress not later than July 31, 1972, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.*

(e) (1) *The Workmen's Compensation Commission or, on the authorization of the Workmen's Compensation Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings, take such testimony, and sit and act at such times and places as the Workmen's Compensation Commission deems advisable. Any member authorized by the Workmen's Compensation Commission may administer oaths or affirmations to witnesses appearing before the Workmen's Compensation Commission or any subcommittee or members thereof.*

2. Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Workmen's Compensation Commission, upon request made by the Chairman or Vice Chairman, such information as the Workmen's Compensation Commission deems necessary to carry out its functions under this section.

(f) Subject to such rules and regulations as may be adopted by the Workmen's Compensation Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3101 of title 5, United States Code.

(g) The Workmen's Compensation Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(h) Members of the Workmen's Compensation Commission shall receive compensation for each day they are engaged in the performance of their duties as members of the Workmen's Compensation Commission at the daily rate prescribed for GS-18 under section 5332 of title 5, United States Code, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Workmen's Compensation Commission.

(i) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(j) On the twentieth day after the date of submission of its final report to the President, the Workmen's Compensation Commission shall cease to exist.

ECONOMIC ASSISTANCE TO SMALL BUSINESSES

SEC. 18. (a) Section 7(b) of the Small Business Act, as amended, is amended—

(1) by striking out the period at the end of "paragraph (4)" and inserting in lieu thereof "and"; and

(2) by adding after paragraph (4) a new paragraph as follows:

(5) to make such loans (either directly or in cooperation with banks or other lending institutions) through agreements to participate in an immediate delivery loaning to the Administration may determine to be necessary or appropriate to assist any small business concern in effecting adaptation or adjustment to the equipment, facilities, or methods of operation of such business in order to comply with the applicable standards promulgated pursuant to section 2 of the Occupational Safety and Health Act of 1970 or standards adopted by a State pursuant to a prior approval under section 18 of the Occupational Safety and Health Act of 1970, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of the Small Business Act, as amended, is amended by striking out "or (5)" after "paragraph (3)" and inserting a comma followed by "(5) or (6)".

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting "7(b)(6)," after "7(b)(5),".

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(6) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

ADDITIONAL ASSISTANT SECRETARY OF LABOR

SEC. 29. (a) Section 2 of the Act of April 17, 1946 (60 Stat. 91) as amended (29 U.S.C. 553) is amended by—

(1) striking out "four" in the first sentence of such section and inserting in lieu thereof "five"; and

(2) adding at the end thereof the following new sentence, "One of such Assistant Secretaries shall be an Assistant Secretary of Labor for Occupational Safety and Health."

(b) Paragraph (20) of section 5315 of title 5, United States Code, is amended by striking out "(4)" and inserting in lieu thereof "(5)".

ADDITIONAL POSITIONS

SEC. 30. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (8);

(2) striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (9) the following new paragraph:

"(10)(A) the Secretary of Labor, subject to the standards and procedures prescribed by this chapter, may place an additional twenty-five positions in the Department of Labor in GS-16, 17, and 18 for the purposes of carrying out his responsibilities under the Occupational Safety and Health Act of 1970;

"(B) the Occupational Safety and Health Review Commission, subject to the standards and procedures prescribed by this chapter, may place ten positions in GS-16, 17, and 18 in carrying out its functions under the Occupational Safety and Health Act of 1970."

EMERGENCY LOCATOR BEACONS

SEC. 31. Section 601 of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new subsection as follows:

"EMERGENCY LOCATOR BEACONS

"(d)(1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator beacons shall be installed—

"(A) on any fixed-wing, powered aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following the date of enactment of this subsection; and

"(B) on any fixed-wing, powered aircraft used in air commerce after three years following such date.

"(2) The provisions of this subsection shall not apply to jet-powered aircraft; aircraft used in air transportation (other than air taxis and

charter aircraft, military aircraft; aircraft used solely for training purposes and training flights, more than twenty miles from its base, and aircraft used for the aerial application of chemicals."

SEPARABILITY

Sec. 32. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

APPROPRIATIONS

Sec. 33. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

Sec. 34. This Act shall take effect one hundred and twenty days after the date of its enactment.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill, and agree to the same.

CARL D. PERKINS,
EDITH GREEN,
FRANK THOMPSON, Jr.,
JOHN H. DENT,
DOMINICK V. DANIELS,
JAMES G. O'HARA,
AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
WILLIAM D. HATHAWAY,
LLOYD MEEDS,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
WILLIAM H. AYRES,
ALBERT H. QUIE,
JOHN N. ERLNBORN,
MARVIN L. ESCH,
EDWIN D. ESHLEMAN,
WILLIAM A. STEIGER,

Managers on the Part of the House.

HARRISON A. WILLIAMS,
RALPH W. YARBOROUGH,
JENNINGS RANDOLPH,
CLAIBORNE PELL,
GAYLORD NELSON,
WALTER F. MONDALE,
THOMAS F. EAGLETON,
ALAN CRANSTON,
JACOB K. JAVITS,
WINSTON L. PROUTY,
WILLIAM B. SAXBE,
RICHARD S. SCHWEIKER,
PETER H. DOMINICK,

Managers on the Part of the Senate.

OCCUPATIONAL SAFETY AND HEALTH

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2193) to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women, to assist and encourage States to participate in efforts to assure such working conditions, to provide for research, information, education, and training in the field of occupational safety and health, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a new text. The conference report recommends a substitute text for both the Senate bill and the House amendment. Except for minor, technical, and clarifying differences, this statement describes the actions of the conferees insofar as they recommend changes in the House amendment.

CONGRESSIONAL FINDINGS AND PURPOSE

The findings and purposes of the Senate bill and the House amendment were consistent but the House provisions were more detailed. The Senate receded.

DEFINITIONS

Under the Senate bill to qualify as a "national consensus standard", interested parties had to reach substantial agreement on its adoption after diverse views had been considered. Under the House amendment, a standard qualified if in the process interested parties' views were considered. The House receded.

APPLICABILITY OF ACT

The Senate bill did not provide coverage for Guam. The House amendment did. A House provision excluded from coverage any vessel underway on the Outer Continental Shelf lands. The House receded on the second point, the Senate on the first.

EFFECT ON OTHER LAWS

The Senate bill said the Act should not apply to working conditions with respect to which other Federal agencies exercise statutory authority affecting occupational safety and health, while the House amendment excluded employees whose working conditions were so regulated. The House language had an additional exclusion relating to employees

whose safety and health were regulated by state agencies acting under section 274 of the Atomic Energy Act of 1954. The House receded on the first point; the Senate receded on the second.

The Senate bill provided that safety standards under any law administered by the Secretary of Labor (Walsh-Healy, Service Contract Act, Construction Safety Act, Arts and Humanities Act, and Longshore Safety) would be superseded when more effective standards are promulgated under this Act, but until then they were deemed standards under the present Act. The enforcement process of this Act was thus added to the enforcement procedures of those other Acts. The House amendment repealed and rescinded standards under the Walsh-Healy, the Service Contracts, and the Arts and Humanities Acts. All construction industry employers were exempted from this Act and the entire industry brought under the Construction Safety Act. That Act was amended to make the enforcement provisions of this Act applicable. Unlike the Senate bill which left the hearing of contract violation cases with the Secretary, the House amendment provided the hearing of such cases by the Safety and Health Commission. The House receded.

The conferees intend that the Secretary develop health and safety standards for construction workers covered by Public Law 91-54 pursuant to the provisions of that law and that he use the same mechanisms and resources for the development of health and safety standards for all the other construction workers newly covered by this Act, including those engaged in alterations, repairs, painting and/or decorating.

It is understood by the Conferees that in any enforcement proceedings brought under either this Act or under such other Acts, the principle of collateral estoppel will apply.

DUTIES OF EMPLOYERS AND EMPLOYEES

Employers' Duties. The Senate bill required workplaces to be free from "recognized hazards." The House amendment required such places to be free from "any hazards which are readily apparent and are causing or are likely to cause death or serious bodily harm." The House provision was adopted with the Senate's "recognized hazard" term replacing the House's "readily apparent hazard."

Employees' Duties. The Senate bill required each employee to comply with occupational health and safety standards and the rules, regulations, and orders issued under this Act. The House amendment had no comparable provision. The House rededed.

THE PROMULGATION OF HEALTH AND SAFETY STANDARDS

Who Should Promulgate. The Senate bill provided for the promulgation of occupational safety and health standards by the Secretary of Labor. The House amendment authorized their promulgation by a National Occupational Safety and Health Board. The House receded.

Interim Standards Procedure. Unless it was determined that such standards would not improve safety or health, both versions of the bill required the earliest practical promulgation of national consensus and established Federal standards and permitted use of an informal, shortened rule-making procedure. Two years were permitted in the Senate bill, three years in the House amendment. Not contained in

the House amendment was a Senate provision for the promulgation of existing proprietary standards also by a shortened rule-making procedure during the first two years. The Senate receded with respect to the issuance of proprietary standards. The House receded as to the time.

Permanent Standards—Procedure.—In the procedures provided for the establishment and promulgation of standards (other than those mentioned above) there were many similarities in the Senate bill and the House amendment. For instance, both the Secretary and Board were permitted to begin rule-making on their own motion or on the basis of petitions. Some of the procedural differences resulted mainly, however, from the choice of the respective bodies as to who should do the rule-making. The chief difference lay in the fact that the procedure for setting standards in the Senate bill was the informal rule-making procedures of the Administrative Procedure Act and required a hearing only if it was requested. The procedure for setting standards under the House amendment were under the formal rule-making procedures also provided in the Administrative Procedure Act. The House receded on the procedure for promulgating standards.

Once it was decided that a rule should be prescribed, both the Secretary (under the Senate bill) and the Board (under the House amendment) were permitted to appoint an advisory committee to make recommendations. The Senate bill required a report back from the advisory committee within 90 days, which could be extended to 120 days. The House amendment established the normal time to be 70 days, which could be extended to 1 year, 3 months. Both versions permitted the Secretary to prescribe a shorter period.

Under the Senate bill, the Secretary was required to publish a proposed rule promulgating, modifying or remaking a safety or health standard in the Federal Register. This publication had to follow within 10 days the recommendation of an advisory committee or, if they failed to report back, within 60 days of the time set by the Secretary for their recommendations. Publication in the Register permitted interested persons 30 days to submit written data or comments and to ask for a hearing. Within an additional 30 days the Secretary was required to publish any standard which had been objected to and a hearing requested. He had also to set a time and place for a hearing. Sixty days after the expiration of the time permitted for filing written data or comments, or 60 days after completion of the hearing, the Secretary had to issue the rule or determine that a rule should not be issued.

Under the House bill within 4 months after the advisory committee had made its recommendations (or if they failed to do so, 4 months after the time set for them to do so), the Board was required to schedule and give notice of a hearing on the proposal in the Federal Register.

The House provided for issuance of the rule promulgating, modifying, or revoking the standard or declining to do so, within 60 days following completion of the hearings where an advisory committee had acted, 120 days, where no such committee has been appointed. All Senate provisions as to procedure and time limitations were retained.

Effective Date.—Both the Senate bill and the House amendment permitted the Secretary or the Board, respectively, to delay the effective date of a new standard to permit affected employers to

familiarize themselves and their employees with its requirements. The House amendment limited that possible delay to 90 days. The Senate bill had no such limitation. The Senate receded.

Development of Standards—The Senate bill directed the Secretary in setting standards dealing with toxic materials or harmful physical agents to set the standard which assures that no employee will suffer material impairment of health or functional capacity even if he is exposed for all his working life. The Senate bill also provided that (1) standards shall be based on research, demonstrations, experiments, and such other information as may be appropriate; (2) in addition to the attainment to the highest degree of health and safety protection to the employee, other considerations shall be the latest scientific data in the field, the feasibility of these standards, and experience gained under this and other health and safety standards; and (3) whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired. The House amendment had no comparable provisions. The House receded with an amendment which provides that employers may petition for a temporary variance from an occupational health or safety standard if they are unable to comply with a standard for the following limited reasons: unavailability of professional or technical personnel or of necessary materials or equipment or because necessary construction or alteration of facilities cannot be completed in time. Economic hardship is not to be a consideration for the qualification for a temporary extension order. Employees are entitled to a hearing on the order. Such an order may be issued for a maximum period of one year and may not be renewed more than twice.

The conference agreement also permits a variance to permit an employer to participate in an approved experiment to demonstrate or validate new techniques to improve employees safety.

Standards, Labels and Warnings—The Senate bill required standards requiring labels and other warnings to apprise employees of hazards, symptoms, treatments and precautions, etc. The House amendment similarly required the posting of labels and warnings to apprise employees of the existence of hazards and of the suggested methods of avoiding or alleviating them. Such labeling and warning standards were also directed by the Senate bill to be prescribed for protective equipment, control procedures, monitoring methods, and medical examinations. An informal rule-making process was permitted for modifying such labeling, monitoring, and medical examination requirements. The House amendment contained no comparable provision. The House receded.

Both versions required publication of the statement of reasons why an adopted rule would better effectuate the purpose of the Act than a informal consensus standard with which it differs. The Senate bill required a publication of the statement in the Federal Register. The House required its publication as part of the rule. The adopted version requires a simultaneous publication of the rule and the statement.

Emergency Temporary Standards—Emergency temporary standards could be issued under either version of the bill without regard to the normal rule-making requirements and to take immediate effect. The Senate bill provided such action where grave danger results from exposure to toxic substances, harmful physical agents, or new hazards.

The House amendment limited emergency standards to toxic substances, or new hazards "resulting from the introduction of new processes." The House receded.

Standards—Exemption, Variance.—Both the Senate bill and the House amendment permitted an employer limited freedom from a standard promulgated under the Act when he provided equally safe and healthful conditions. The Senate bill characterized this as a "variance" while the House called it an "exemption." The Senate term prevailed.

Standards—Pre-enforcement Review.—The Senate bill permitted pre-enforcement judicial review by anyone adversely affected by any standard in his local circuit court of appeals provided he filed within 60 days after the promulgation. Pre-enforcement review was limited by the House amendment to the D.C. Court of Appeals and to within 60 days of issuance. The "substantial evidence" test was the basis of court review in the House amendment; in the Senate bill, the more rigorous standards generally applicable to review of rules would have been applicable. Review in the local Circuit Court of Appeals, the use of the "substantial evidence" test, and a 60-day limitation on the appeal time were accepted by the conferees.

Delegation of Authority.—Under the House amendment the Secretary was authorized to delegate his inspection authority to other agencies of the Federal Government or to agencies of the States with their permission. The Senate bill had no such provision. The House receded.

Advisory Committees—Memberships.—The House amendment made the appointment of employer and employee representatives to Advisory Committees mandatory in standard-setting proceedings. The Senate bill did not. The Senate receded.

Advisory Committees—Meetings.—The House amendment required that Advisory Committee meetings be open to the public, whereas the Senate bill did not. The Senate receded.

National Advisory Committee.—The Senate bill provided that the National Advisory Committee should have twenty members, the House amendment provided for twelve. The Senate bill specifically provided for representation on the Committee of the occupational safety and health professions. The House amendment did not. The House language was adopted but modified to provide for representation of the safety and health professions.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

Inspections.—The House amendment required that an inspector's entry into a workplace be permitted "without delay," which was not specified in the Senate bill. The Senate bill specified that the inspector could "privately" question employers, owners, agents and employees, the House amendment did not. The Senate receded on the first point, the House on the second. The Senate receded also to the House in its version of the provision authorizing compulsory process for witnesses and the production of evidence.

Inspections—Record Keeping.—The Senate bill permitted the Secretary to require record-keeping not only to insure compliance but also for the collection of research information. The House amendment limited his authority to the former purpose. The House receded.

Self-Inspection and Protection.—The Senate bill permitted the Secretary to require periodic self-inspections by the employer and certification of the results. There was no such provision in the House amendment. The House receded, with an amendment, deleting the language with respect to the certification of results. A Senate bill provision, without a House amendment counterpart, permitting the Secretary to require the posting of notices to keep employees informed of the protections of the Act, was retained.

Employer Reports.—A Senate bill provision without a counterpart in the House amendment permitted the Secretary to require an employer to keep records and make reports on "all work-related deaths, injuries and illnesses." The House receded with an amendment limiting the reporting requirement to injuries and illnesses other than of a minor nature, with a specific definition of what is not of a minor nature.

Employer Exposure Records.—The Senate bill, but not the House amendment, required the recording of employee exposures to potentially toxic or harmful materials required to be monitored or measured under Sections 6 (standards) or 19 (research). The House receded with an amendment which required recording only of those substances required to be monitored or measured under Section 6.

The Senate bill provided and the House amendment did not, for employee access to the monitoring process and for an employee's right to be notified when he had been exposed to *potentially* toxic substances. The House receded with the deletion of the word "potentially."

Information Required of Employers.—Both the Senate bill and the House amendment provided that the federal information requirement imposed on employers be as light as possible with duplication kept to a minimum. The House amendment, in addition, placed a similar structure on State agencies operating under this Act. The Senate receded.

Labor-Management Aid of Inspection.—The Senate bill required that both a management and an employee representative be given an opportunity to accompany an inspector conducting an inspection of the workplace. Where there is no employee representative the Senate bill required consultation with a reasonable number of employees about safety in the workplace. The House amendment did not require such an opportunity for either the employer or the employee representative but provided that if the employer accompanied the Secretary during the conduct of an inspection, the employee representative would also be given the opportunity. The House receded with the understanding that the provision in itself does not confer authority on the Secretary to prescribe regulations with respect to representation questions in a collective bargaining context.

Special Inspection.—A special inspection was required by the Senate bill as soon as practicable where an employee alleges the violation of a standard in writing, and the Secretary finds probable cause to believe that a violation exists. In case of a refusal to conduct an inspection or if any inspection results in a finding that no violation exists, a notification of that decision must be provided the employee in writing. The House receded. Where during any inspection or prior to a scheduled inspection an employee alleges a violation in writing, the Senate bill required a written explanation of a negative finding. An informant penalty process was in the latter instance also provided for

There were no comparable provisions in the House amendment. The House receded with amendments requiring the employer to be given notice of the request for an inspection and deleting the requirement that failure to find a violation be explained in writing.

CITATIONS FOR VIOLATIONS

The Senate bill provided that if, upon inspection or investigation, the Secretary or his authorized representative "determines" that an employer has violated mandatory requirements under the Act, he shall "forthwith" issue a citation. The House amendment provided that if on the basis of an inspection or investigation the Secretary "believes" that an employer has violated such requirements, he shall issue a citation to the employer. The conference report provides that if the Secretary "believes" that an employer has violated such requirements he shall issue the citation with reasonable promptness. In the absence of exceptional circumstances any delay is not expected to exceed 72 hours from the time the violation is detected by the inspector.

The Senate bill kept separate the proceedings for the issuance of the citation from those with respect to the imposition of penalties for violations. The House amendment combined proposed penalties with the issuance of the citation. The conference report follows the provisions of the Senate bill in this respect.

The Senate bill provided for a notice in lieu of citations in de minimis cases. The House amendment did not require a citation in de minimis cases. The conference report follows the provisions of the Senate bill.

The House amendment permitted a citation to be issued no later than 90 days following the occurrence of a violation. There was no comparable Senate provision. The House receded.

Both versions required the posting of citations at or near the place of violation, but the Senate bill expressly provided that posting regulations should be issued by the Secretary. The conference report contains the provisions of the Senate bill.

The House amendment prohibited issuance of a citation more than three months after the occurrence of any violation. The Senate bill had no such statute of limitations. The Senate receded with an amendment changing the three months to six months.

Under the Senate bill the Secretary had to notify the employer within a reasonable time after a citation of the amount of a penalty. The employer had to give notice of his intention to contest the citation or penalty with fifteen days of the notice or the penalty was to be final. Under the House amendment the employer had similar rights. He was to notify the Secretary of his intention to appeal. The Secretary was to notify the Appeals Commission which had to give him a hearing. The House receded.

The Senate bill specified procedures to be followed when there was a failure to correct a violation within the time provided in a citation. The House amendment contained no such provision. The House receded.

The Senate bill gave employees the right to appeal the time allowed for abatement of a violation and provided that the Commission should prescribe rules of procedure giving employees the opportunity to

participate as parties. The House amendment restricted the right of appeal in such cases to the employer. The House receded with an amendment which provides that the employer shall have a right to reopen the proceedings for a re-hearing in the event it is impossible to comply with the abatement requirements within the period provided for in the citation.

JUDICIAL PROCEEDINGS

Both the Senate bill and the House amendment provided for judicial review of Commission decisions. The Senate bill provided appeal rights to any person adversely affected or aggrieved by an order of the Commission. The House amendment limited appeal rights to the employer and the Secretary. The House amendment provided for judicial review in the Court of Appeals for the circuit where the violation occurred or where the employer had his principal office. The Senate bill also permitted review in the D.C. Court of Appeals. The House receded.

Under the Senate bill all Commission orders became final fifteen days after issuance unless stayed by the Court of Appeals. Under the House amendment the filing of a petition for review automatically stays a Commission order. The Senate bill, but not the House amendment, permitted uncontested orders of the Commission to be entered as orders of the Court of Appeals. The House receded with an amendment providing for the finality of Commission orders thirty days after issuance unless stayed by the court.

The Senate bill provided for assessment of penalties in contempt proceedings to enforce a Court of Appeals decree. The House bill had no comparable provision. The House receded.

The Senate bill did not contain a provision which was in the House amendment authorizing a district court suit to collect civil penalties. The Senate receded.

The Senate bill provided for administrative action to obtain relief for an employee discriminated against for asserting rights under this Act, including reinstatement with back pay. The House bill contained no provision for obtaining such administrative relief, rather it provided civil and criminal penalties for employers who discriminate against employees in such cases. With respect to the first matter, the House receded with an amendment making specific the jurisdiction of the district courts for proceedings brought by the Secretary to restrain violations and other appropriate relief. With respect to the second matter dealing with civil and criminal penalties for employers, the House receded.

OCCUPATIONAL SAFETY AND HEALTH APPEALS COMMISSION

The Occupational Safety and Health Review Commission in the Senate bill and the Occupational Safety and Health Appeals Commission in the House amendment are composed of three members in each instance, with terms under the Senate bill of five years and under the House amendment of six years. In other respects, though differing in actual language, both bills were alike in legal effect. With respect to the term of office the Senate receded. But in the other respects, the conference report uses the language in the Senate bill.

The Senate bill provided that all members of the Appeals Commission were to receive the same salary at Executive Level 4. The House amendment gave the Chairman a higher salary at Executive Level 3. The Senate receded. The House amendment provided that the Commission might appoint hearing examiners without regard to any statutory limitations on grades GS-16 and above. The Senate receded.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

The Senate bill authorized the Secretary to seek a court order to remove or correct an imminent danger and require the withdrawal of endangered persons other than "those necessary to correct the danger, maintain the operating capacity of a continuous process operation or permit a safe and orderly shutdown." The Senate bill contained no limitation on the duration of such a temporary restraining order, although the 10-day limit in the F.R.C.P. was applicable. The Senate bill permitted the Secretary to issue an administrative imminent danger shutdown order where there was insufficient time to obtain a court order. The House amendment authorized the Secretary to seek court orders to restrain conditions or practices which caused imminent dangers. A temporary restraining order under the House amendment was to remain in effect only five days. The House amendment contained no provision permitting the Secretary to issue an administrative imminent danger order. The Senate receded with an amendment adopting with minor changes the limitations on court authority mentioned in the quotation above.

The Senate bill provided that if the Secretary arbitrarily or capriciously failed to issue or seek an imminent danger order, employees might seek a writ of mandamus against him. The House amendment provided that where the Secretary unreasonably failed to seek an order an employee injured thereby might bring an action for damages in the Court of Claims. The House receded.

The House amendment provided that where an injunction was issued the court must set a sum for the payment of damages if the injunction is eventually found to have been in error. There was no comparable provision in the Senate bill. The House receded.

REPRESENTATION IN CIVIL LITIGATION

The Senate bill and the House amendment contained comparable provisions for the Solicitor of Labor to appear for and represent the Secretary in any civil litigation brought under the Act, but the House amendment unlike the Senate bill made specific reference to the Attorney General's authority to represent the United States in the Court of Claims. The Senate receded. The conferees expect that the Solicitor of Labor will represent the Department of Labor in proceedings before the Review Commission.

CONFIDENTIALITY OF TRADE SECRETS

Provision was made in both versions of the bill for the protection of trade secrets. The House amendment provided that in proceedings arising under the Act such information should be presented off the public record and preserved separately. The Senate bill provided that the court or the Secretary should issue appropriate orders to preserve confidentiality. The House receded.

VARIATIONS, TOLERANCES AND EXEMPTIONS

Both bills provided that variations, tolerances and exemptions shall not be in effect more than six months without notification to employees and an opportunity for a hearing. In addition, the House bill also provided that variations, tolerances, and exemptions may not be granted in the first instance without notice and an opportunity for a hearing. The Senate receded.

PENALTIES

The Senate bill provided that there shall be assessed a civil penalty of not more than \$1,000 for each violation. The House amendment was similar unless the violation was determined not to be of a serious nature in which case a civil penalty of up to \$1,000 was discretionary. The Senate bill provided for civil penalties of not more than \$1,000 for each day in which an imminent danger order or final order of the Commission was violated. The House amendment also provided for a penalty of up to \$1,000 for each day in which an order which has become final was violated. The Senate receded on each point.

Both bills permitted mitigation, compromise, or settlement of penalties. The House amendment required publication in the Federal Register whenever the Secretary mitigated, compromised, or settled any penalty. Both bills contained similar provisions which specify the factors to be considered in assessing a penalty. The Senate receded.

The Senate bill provided criminal penalties for wilful violations (not more than \$10,000 and or six months doubled after first conviction). The House amendment provided for a civil penalty of up to \$10,000 for wilful or repeated violations. The Senate receded on civil penalties and the House receded on criminal penalties with an amendment which requires that the wilful violation of the standard or the rule, regulation or order result in death to an employee, for the employer to be subject to the criminal penalties provided in the subsection.

The House amendment provided no penalty for giving advanced notice of any inspection to be conducted under the Act. The Senate bill provided a fine not to exceed \$1,000 and imprisonment for not more than six months or both for giving advanced notice. The House receded.

The Senate bill contained a provision providing penalties for false statements, representations, or certifications. The House amendment contained no comparable provision. The House receded.

Both bills provided identical penalties for any person who assaults, intimidates, or interferes with Federal investigators and inspectors in the performance of their duties, though the bills took different approaches. The Senate bill extended to each investigator and inspectors the basic statutory protection contained in section 1114 of Title 18 of the United States Code. The House amendment set forth the prohibited activities and the penalties in the Act. The Conference Report contains the language of the Senate bill to which has been added language from the House amendment providing that a person who kills a person while engaged in or on account of the performance of his duties under the Act shall be punished by imprisonment for any term of years or for life.

The Senate bill, unlike the House amendment, did not specifically provide a penalty for violation of posting requirements. The Senate receded.

The House amendment contained a provision specifying the factors to be considered in the assessment of penalties. The Senate receded with an amendment which struck from the provision specified authority for the Commission to collect the penalties as well as to assess them.

The House amendment, unlike the Senate bill, contained a provision setting forth certain factors under which a serious violation shall be deemed to exist. The Senate receded.

STATE JURISDICTION AND STATE PLANS

Both versions of the bill provided for court review of a decision of the Secretary to reject or withdraw approval of a State plan. The Senate bill applied a "substantial evidence" standard of review and the House amendment applied an "arbitrary and capricious" standard. The House receded.

Both versions of the bill allowed agreements between the Secretary and a State whereby the State could continue enforcement of its health and safety standards pending final action on the State plan. The Senate bill limited such agreements to standards which were not in conflict with Federal standards. The Senate bill also provided that a State standard which was more stringent than a Federal standard was not to be regarded as one in conflict with that Federal standard. The Senate receded.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

Annual reports to the Congress with respect to progress of Federal agency safety programs were required in both the Senate bill and the House amendment. The Senate bill specified that the President should forward to the Congress a summary or digest of the reports submitted to him by the Secretary, whereas the House bill required the President to submit a report of the activities of Federal agencies in this regard. The Senate receded.

RESEARCH AND RELATED ACTIVITIES

Both bills required the Secretary of HEW to consult with the Secretary of Labor to develop a research plan in order to develop criteria to assist in setting standards. The Senate bill specified that criteria dealing with toxic materials and harmful physical agents should be developed to demonstrate the exposure levels at which the worker would experience no impairment of health function or life expectancy, whereas the House bill did not. The House amendment required annual publication of the criteria developed by the Secretary of HEW, whereas the Senate bill did not. The House receded on these provisions with an amendment to require the development of such criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacity or diminished life expectancy as a result of his work experience.

The Senate bill authorized the Secretary of HEW for research purposes to establish medical examinations for such employees and to require any employer to measure, monitor, and make reports on the exposure of his employees to potentially toxic or harmful agents. With regard to the latter, on the request of any such employer the Secretary was required to defray the added cost incurred by that employer. There was no comparable House provision. The House receded with the understanding that regulations issued by the Secretary of HEW pursuant to this subsection requiring employer measurement, recording, and reporting will be limited to those instances in which there is a reasonable probability of developing information on toxic substances or harmful physical agents.

The House amendment authorized appropriations of such sums as Congress deems necessary to enable the Secretary of Labor to purchase monitoring equipment for all employers required by any standard, rule or regulation to measure the exposure of employees to unhealthy environments for the protection of the employee and to establish compliance with such standards, rules or regulations. There was no comparable Senate provision. The House receded.

Both the Senate bill and the House amendment required the Secretary of HEW to publish on an annual basis a list of toxic substances. The Senate bill required only the publication of those toxic substances which are "used or found in the work place" whereas the House amendment did not contain such a limitation. The Senate receded.

Both the Senate bill and the House amendment provided for the determination of toxicity when requested by any employer or employee. The Senate bill provided that the Secretary of HEW make such a determination on "written request" which specified with "reasonable particularity" the grounds on which the request was being made. Under the Senate bill, if toxicity was determined and no applicable standard was in effect, the Secretary of Labor was to be so advised. There was no such requirement in the House amendment. Further, under the House amendment, the determination of toxicity was to be made by the Board and there was no requirement that the request be particularized or in writing. The House receded on these provisions.

The Senate bill required the Secretary of HEW to conduct and publish annually industrywide studies of the effects of chronic and low level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults. There was no comparable House provision. The House receded.

NATIONAL INSTITUTE

The Senate bill directed the delegation of HEW functions where feasible to a National Institute for Occupational Safety and Health established by the Senate bill. There were no comparable provisions in the House amendment. The Conference agreement provided for the creation of the National Institute and requires the delegation provided for in the Senate bill.

STATISTICS

Both versions of the bill provided for the collection, compilation and publishing of occupational safety and health statistics. The House amendment but not the Senate bill authorized such efforts for all employments whether or not they were covered by this Act, so long as they are included within the geographical authority of the Act. The Senate receded with an amendment to require the Secretary of Labor to consult with the Secretary of HEW in the carrying out of this statistical program, and specifying the types of injuries on which statistics must be collected.

The House amendment but not the Senate bill explicitly provided that any existing agreements between the Labor Department and the States for the collection of statistics remain in effect until superseded by new arrangements under this Act. The Senate receded.

AUDITS

Both versions of the bill authorized the Secretary of Labor to require grantees under the Act to maintain such records and accounts as deemed necessary. The Senate bill but not the House amendment provided the same authority to the Secretary of HEW. The House receded.

Both versions of the bill required all grantees to provide access to their books and records to the Secretary of Labor and the Comptroller General. The Senate bill also provided the Secretary of HEW with such access. The House receded.

COMMISSION ON WORKMEN'S COMPENSATION LAWS

The Senate bill established a National Commission on State Workmen's Compensation Laws to undertake an effective study and objective evaluation of State Workmen's Compensation laws. The Commission was required to report its findings, conclusions and recommendations to the President and the Congress no later than February 1, 1972. The House receded with an amendment changing the reporting date to July 31, 1972.

ADDITIONAL ASSISTANT SECRETARY OF LABOR

The Senate bill provided for an additional Assistant Secretary of Labor to be known as the "Assistant Secretary of Labor for Occupational Safety and Health." The House amendment did not. The House receded.

ADDITIONAL POSITIONS

To carry out responsibilities under the Act the Senate bill but not the House amendment provided for additional supergrade positions for the Department of Labor and the Review Commission. The House receded.

EMERGENCY LOCATOR BEACONS

The Senate bill, but not the House amendment, amended the Federal Aviation Act to require emergency locator beacons on aircraft. The House receded.

EFFECTIVE DATE

The conference agreement provides that the Act should take effect 120 days after the date of enactment as provided in the House amendment rather than in 30 days after the enactment as provided in the Senate bill.

TITLE

The conference adopted the title contained in the House bill which reads as follows: "An Act to assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes."

CARL D. PERKINS,
EDITH GREEN,
FRANK THOMPSON Jr.,
JOHN H. DENT,
DOMINICK V. DANIELS,
JAMES G. O'HARA,
AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
WILLIAM D. HATHAWAY,
LLOYD MEEDS,
PHILLIP BURTON,
JOSEPH M. GAYDOS,
WILLIAM H. AYRES,
ALBERT H. QUIE,
JOHN N. ERLBORN,
MARVIN L. ESCH,
EDWIN D. ESHLEMAN,
WM. A. STEIGER,

Managers on the Part of the House.

[From the Congressional Record—House, Dec. 17, 1970]

CONFERENCE REPORT ON S. 2193, OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Mr. PERKINS. Mr. Speaker, I call up the conference report on the bill (S. 2193), to authorize the Secretary of Labor to set standards to assure safe and healthful working conditions for working men and women; to assist and encourage States to participate in efforts to assure such working conditions; to provide for research, information, education and training in the field of occupational safety and health, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was on objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of December 16, 1970.)

Mr. PERKINS (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement of the managers be dispensed with.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

Mr. HALL. Mr. Speaker, reserving the right to object, may I ask the gentleman from Kentucky if there are copies of this conference report available?

Mr. PERKINS. The conference report was printed in the RECORD yesterday, under the rules of the House. It is in the RECORD delivered today.

Mr. HALL. Mr. Speaker, would the gentleman answer "yes" or "no"? Are copies available on the floor for Members during this consideration?

Mr. PERKINS. Copies are available on the floor, because all a Member has to do is open up the CONGRESSIONAL RECORD.

The gentleman from Minnesota (Mr. Quie) has the page in the RECORD, and I yield to the gentleman.

Mr. QUIE. It is page H11801 of the RECORD for December 16, 1970.

Mr. HALL. Mr. Speaker, further reserving the right to object, the fact remains that we do not have the usual printed copies of the conference report available at the various desks for the Members; is that not true?

Mr. PERKINS. We do not have the report at your desk, but I have an extra copy here I will give to the gentleman now and, as I said, it has been printed in the RECORD.

Mr. HALL. This is what comes from allowing printing under the rules and filing prior to midnight. It brings about an obvious impossible job of printing from an overburdened Government Printing Office,

when they cannot possibly grind out all of this material in time for us intelligently to do our homework and consider it and express a judgment on the floor of the House of Representatives. As further proof Members should note where the printed record of legislative debate is cutoff in the issue for yesterday.

Mr. PERKINS. Will the gentleman yield to me further?

Mr. HALL. I will be glad to yield.

Mr. PERKINS. Let me say to my distinguished colleague that the report was filed yesterday at approximately 1 p.m. If I had known, I would have been delighted to deliver you a copy earlier. I regret that I did not.

Mr. HALL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The SPEAKER pro tempore. The gentleman from Kentucky is recognized.

Mr. PERKINS. Mr. Speaker, I yield myself 10 minutes.

(Mr. Perkins asked and was given permission to revise and extend his remarks and include extraneous matter.)

Mr. PERKINS. Mr. Speaker, I am pleased to present to the House the conference report on the occupational health and safety legislation. This report has been signed by 18 of the 20 conferees that participated in this conference.

This was not an easy conference. In fact, it was a difficult one. We had some five sessions, several of which lasted 7 hours or more. There was substantial give and take on both sides. There were many issues on which one side or the other, and often both, felt very strongly. The end result was a conference report, however, that is fair and equitable to everyone—a conference report of which we can all be proud.

I want to pay tribute to the members of the conference committee. I want to pay particular tribute to the distinguished subcommittee chairman, the gentleman from New Jersey (Mr. Daniels). He worked for many, many months bringing this legislation to this point where we now hope it can become law. This is landmark legislation, touching almost every industry in the country that is engaged in interstate commerce.

I want to pay tribute, also, to our minority members, Congressmen Steiger, Quie, Esch, and Erlenborn who worked diligently with the majority trying to resolve all these difficult issues and to bring about a report which will go down in the history as a major advance providing major benefits and protections to all the working people in this country.

We owe a great debt of gratitude to Congressmen Daniels, Steiger, and Quie. They persevered, day in and day out, to help us arrive at an agreement in conference.

We have here today a conference report that every Member in this Chamber can support.

Mr. Speaker, I shall review the major differences resolved in the conference report.

THE PROMULGATION OF STANDARDS

A major concession on the part of the managers representing the House of Representatives was with respect to the procedure to be used in the development and promulgation of the health and safety standards. The Members of this body will recall that the Senate bill provided for promulgation of these standards by the Secretary of Labor. The House amendment authorized their promulgation by a National Occupational Safety and Health Board. In the procedures provided for the establishment and promulgation of standards there were many similarities in the Senate bill and the House amendment. For instance, both the Secretary and Board were permitted to begin rulemaking on their own motion or on the basis of petitions. Some of the procedural differences resulted mainly, however, from the choice of the respective bodies as to who should do the rulemaking. The chief difference lay in the fact that the procedure for setting standards under the House amendment were under the formal rulemaking procedures also provided in the Administrative Procedure Act. The House receded on the procedure for promulgating standards. We accepted the Secretary of Labor as the promulgator of the standards and we adopted the informal rulemaking procedures which the Senate bill authorized.

We accepted a provision that hearings should be required only when requested by interested parties, and did not require a hearing on every proposed standard as the House amendment would have required. There were important Senate concessions even in this area, however. The Senate receded with respect to a provision in their bill which would have permitted a shortened rulemaking procedure for the issuance of existing proprietary standards. In addition, in adopting the Senate language the House insisted on an amendment under which employers may petition for a temporary order granting a variance from a standard promulgated by the Secretary. Such an order is to be granted only if the employer shows he is unable to comply with a standard for specific and limited reasons, the unavailability of professional or technical personnel, or of necessary materials or equipment, or because necessary construction or alteration of facilities cannot be completed in the time required. The economic implications of a standard for an employer are not to be considered in the determination as to whether a variance is to be allowed. The employees of such an employer are entitled to notice and hearing on such an order. Such an order may be issued in any given case for a maximum of 1 year and may not be renewed more than twice.

INSPECTION

The differences in the two versions of the bill with respect to inspection by the Secretary of Labor were not major, save in two respects. The Senate bill would have required an employer to make periodic self-inspections to be followed by a certification of the results to the Secretary of Labor. This would have faced an employer with the unfortunate choice of admitting a violation of a standard which would have subjected him to a citation under the act or subjecting himself to a charge of having made a false statement if he did not accurately

report the condition or situation that was a violation of a standard under this act. The conferees adopted the principle of self-inspection. The Secretary may now provide for such self-inspection by regulation, but no certification of the results may be required.

Under the provisions of the Senate bill both a management and an employee representative had to be given an opportunity to accompany an inspector. The conferees adopted this principle rather than the provision of the House amendment under which an employee representative would have been given the opportunity to accompany an inspector only if the employer or his representative also accompanied the inspector.

CITATIONS FOR VIOLATIONS

The Senate bill provided that if, upon inspection or investigation, the Secretary or his authorized representative "determines" that an employer has violated mandatory requirements under the act, he shall "forthwith" issue a citation. The House amendment provided that if on the basis of any inspection or investigation the Secretary "believes" that an employer has violated such requirements, he shall issue a citation to the employer. The conference report provides that if the Secretary "believes" that an employer has violated such requirements he shall issue the citation with "reasonable promptness." In the absence of exceptional circumstances any delay is not expected to exceed 72 hours from the time the violation is detected by the inspector.

The Senate bill kept separate the proceedings for the issuance of the citation from those with respect to the imposition of penalties for violations. The House amendment combined proposed penalties with the issuance of the citation. The conference report follows the provisions of the Senate bill in this respect.

The House amendment prohibited issuance of a citation more than 3 months after the occurrence of any violation. The Senate bill had no such statute of limitations. The Senate receded with an amendment changing the 3 months to 6 months.

The Senate bill gave employees the right to appeal the time allowed for abatement of a violation and provided that the Commission should prescribe the rules of procedure giving employees the opportunity to participate as parties. The House amendment restricted the right of appeal in such cases to the employer. The House receded with an amendment which provides that the employer shall have a right to reopen the proceedings for a rehearing in the event it is impossible to comply with the abatement requirements with the period provided for in the citation.

JUDICIAL PROCEEDINGS

Both the Senate bill and the House amendment provided for judicial review of Commission decisions. The Senate bill provided appeal rights to any person adversely affected or aggrieved by an order of the Commission. The House amendment limited appeal rights to the employer and the Secretary. The House amendment provided for judicial review in the court of appeals for the circuit where the violation occurred or where the employer had his principal office. The Senate bill also permitted review in the District of Columbia Court of Appeals. The House receded.

The Senate bill provided for administrative action to obtain relief for an employee discriminated against for asserting rights under this act, including reinstatement with back pay. The House bill contained no provision for obtaining such administrative relief; rather it provided civil and criminal penalties for employers who discriminate against employees in such cases. With respect to the first matter, the House receded with an amendment making specific the jurisdiction of the district courts for proceedings brought by the Secretary to restrain violations and other appropriate relief. With respect to the second matter dealing with civil and criminal penalties for employers, the House receded.

The Senate bill provided that there shall be assessed a civil penalty not more than \$1,000 for each violation. The House amendment was similar unless the violation was determined not to be of a serious nature in which case a civil penalty of up to \$1,000 was discretionary. The Senate bill provided for civil penalties of not more than \$1,000 for each day in which an imminent danger order or final order of the Commission was violated. The House amendment also provided for a penalty of up to \$1,000 for each day in which an order which has become final was violated. The Senate receded on each point.

The Senate bill provided criminal penalties for willful violations—not more than \$10,000 and/or 6 months doubled after first conviction. The House amendment provided for a civil penalty of up to \$10,000 for willful or repeated violations. The Senate receded on civil penalties and the House receded on criminal penalties with an amendment which requires that the willful violation of the standard or the rule, regulation or order result in death to an employee, for the employer to be subject to the criminal penalties provided in the subsection.

The House amendment provided no penalty for giving advance notice of any inspection to be conducted under the act. The Senate bill provided a fine not to exceed \$1,000 and imprisonment for not more than 6 months or both for giving advanced notice. The House receded.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

The Senate bill authorized the Secretary to seek a court order to remove or correct an imminent danger and require the withdrawal of endangered persons other than "those necessary to correct the danger, maintain the operating capacity of a continuous process operation or permit a safe and orderly shutdown." The Senate bill contained no limitation on the duration of such a temporary restraining order, although the 10-day limit in the FRCP was applicable. The Senate bill permitted the Secretary to issue an administrative imminent danger shutdown order where there was insufficient time to obtain a court order. The House amendment authorized the Secretary to seek court orders to restrain conditions or practices which caused imminent dangers. A temporary restraining order under the House amendment was to remain in effect only 5 days. The House amendment contained no provision permitting the Secretary to issue an administrative imminent danger order. The Senate receded with an amendment adopting with minor changes the limitations on court authority mentioned in the quotation above.

EFFECT ON OTHER LAWS

There was a major difference in the two bills in the treatment of the proposed effect on other preexisting health and safety statutes. I think it appropriate to quote the conference report on this point.

The Senate bill said the act should not apply to working conditions with respect to which other Federal agencies exercise statutory authority affecting occupational safety and health, while the House amendment excluded employees whose working conditions were so regulated. The House language had an additional exclusion relating to employees whose safety and health were regulated by State agencies acting under section 274 of the Atomic Energy Act of 1954. The House receded on the first point; the Senate receded on the second.

The Senate bill provided that safety standards under any law administered by the Secretary of Labor—Walsh-Healy, Service Contract Act, Construction Safety Act, Arts and Humanities Act, and Longshore Safety—would be superseded when more effective standards are promulgated under this act, but until then they were deemed standards under the present act. The enforcement process of this act was thus added to the enforcement procedures of those other acts. The House amendment repealed and rescinded standards under the Walsh-Healy, the Service Contracts, and the Arts and Humanities Acts. All construction industry employers were exempted from this act and the entire industry brought under the Construction Safety Act. That act was amended to make the enforcement provisions of this act applicable. Unlike the Senate bill which left the hearing of contract violation cases with the Secretary, the House amendment provided the hearing of such cases by the Safety and Health Commission. **The House receded.**

The conferees intend that the Secretary develop health and safety standards for construction workers covered by Public Law 91-564 pursuant to the provisions of that law and that he use the same mechanisms and resources for the development of health and safety standards for all the other construction workers newly covered by this act, including those engaged in alterations, repairs, painting and or decorating.

It is understood by the conferees that in any enforcement proceedings brought under either this act or under such other acts, the principle of collateral estoppel will apply.

The Secretary was intended to have alternatives available to him. That is he may elect to pursue the procedure for enforcement laid out in either act and may seek to have imposed the penalty authorized by either act. He may not, however, pursue enforcement under one act and then—whether having failed or succeeded—attempt to pursue the procedure provided in the other act. The provisions for contract termination and de-listing may be applied, of course, in appropriate cases and their imposition will not preclude the possibility of a civil penalty, in addition.

DUTIES OF EMPLOYERS AND EMPLOYEES

The Senate bill required workplaces to be free from "recognized hazards." The House amendment required such places to be free from "any hazards which are readily apparent and are causing or likely to cause death or serious bodily harm." The House provision

as adopted with the Senate's "recognized hazard" term replacing the House's "readily apparent hazard."

The Senate bill required each employee to comply with occupational health and safety standards and the rules, regulations, and orders issued under this act. The House amendment had no comparable provision. The House receded.

The Senate bill made provision for the establishment of a National Institute for Occupational Safety and Health, and also established a National Commission on State Workmen's Compensation Laws, the latter to undertake a study and evaluation of the effectiveness of workmen's compensation statutes. Both the Institute and the Commission were accepted by the conference.

There are other less important differences as to which the Members can enlighten themselves by reading the CONGRESSIONAL RECORD of this morning at page 11801 through page 11814.

May I say in conclusion that I never have been more proud of the work of any conference than I am of this one. I urge my colleagues to lend their support to this most important legislation.

Mr. PERKINS. Mr. Speaker, I yield 10 minutes to the distinguished gentleman from Minnesota (Mr. Quie).

(Mr. Quie asked and was given permission to revise and extend his remarks.)

Mr. QUIE. Mr. Speaker, I join the overwhelming majority of my colleagues who signed the conference report on the occupational safety and health legislation in urging its approval.

Many months ago, in the minority views on the safety and health bill reported by our committee, we declared, and I quote:

"We had every confidence that in this session of Congress we would see the enactment of effective Federal legislation to bring about safe and more healthful working conditions in this country. That confidence was born of the fact of President Nixon's having recommended this legislation in three separate messages to Congress, including a special one devoted exclusively to the urgent and unique problem of job safety and health."

"Our hope was sustained over the months by clear indications from majority members that while reasonable men might differ, any differences could be worked out so that we might achieve the goal of enacting a genuinely effective law to reduce job hazards."

I feel that in the conference report before us we have not only achieved that goal, but also produced a measure, which to a substantial degree, is consistent with the recommendations of President Nixon. Most of the factors essential to a satisfactory occupational safety and health law are included in the conference report. It establishes a mechanism for creating a body of effective safety and health standards appropriate to each category of American enterprise. But it also provides for many immediate safeguards while these standards are being developed, as well as expedited procedures for dealing with emergency situations. Imminent dangers likely to cause death or serious harm if their elimination is not undertaken quickly are more than adequately taken care of.

Nevertheless, despite the scope of these provisions, due process is jealously maintained throughout. At every stage of the procedures which the measure provides, employers are given every necessary opportunity to present their position, not only through the administrative mechanisms of hearings, grants of variances, and extensions of time for compliance, but through judicial review by the Federal courts.

The report also permits the States to develop and administer their own safety and health program where these are consistent with the requirements laid down in the measure. Moreover, financial aid is authorized for such States as meet these requirements, and small business loans are made available to employers who need such assistance in rendering their work places safe and healthful. The gathering of meaningful statistics and provisions for research into the casual connections between work and health and safety are not ignored, but to the contrary occupy a significant place among the programs contemplated by this legislation.

Mr. Speaker, it pleases me a great deal to advise the House, that the measure now before us has the complete support of the President and his administration. Immediately following the termination of the deliberations of the House and Senate conferees I received the following letter from the Secretary of Labor:

DEAR CONGRESSMAN QUINN: I wish to convey to you and the members of Congress the Administration's support for the Occupational Health and Safety legislation reported by the Conference Committee last evening.

In my judgment this bill reflects the major positions taken by this Administration during the entire legislative process and represents a significant achievement in the field of health and safety for America's working men and women.

Specifically I am enthusiastic about the significant steps taken by the Congress to provide for fair procedures by means of the establishment of the Occupational Safety and Health Review Commission as an independent adjudicatory body and by the bill's exclusive court procedure for the restraining of conditions constituting an imminent danger to health and safety. In addition, I intend to utilize the expertise made available under the legislation through the use of advisory boards in the establishment of health and safety standards. The important addition of a new Assistant Secretary for Health and Safety in this Department is a contribution which this Administration intends to exploit to its fullest by the appointment of an outstanding executive to fill that post.

The efforts of both Houses of Congress and the constructive compromise struck by their conferees have resulted in meaningful legislation which I am proud to support.

Sincerely,

JAMES D. HODGSON,
Secretary of Labor.

I believe it is a good compromise. I do not believe it is the best compromise that we could have secured. Rather than going into the various parts of the compromise which the chairman went into, and which I believe the gentleman from Wisconsin (Mr. Steiger)—who did such an outstanding job on the Republican side—will also go into, I would like to just talk a little bit about conference committees and how we operate over there.

As you know, the President yesterday vetoed the manpower and public service employment bill. He vetoed it because we did not reach as good an agreement as we should have in the conference committee. Had we reached an adequate compromise, not demanding the position of the House but an adequate compromise on the public service employment portion of that bill, I do not believe there would have been a veto.

Now, we came close enough here on a good compromise so I don't think there would be a veto, because, as I say, obviously the administration strongly supports this bill, but I do believe we could have come a little closer to the position of the House (in one instance the House conferees had stood by the position of the House. And this is what the Senate expected us to do, first, before they would compromise on

that question of the Secretary of Labor setting standards, or a board of experts setting standards. As you know, we gave in, and there is no provision for a board of experts setting standards.

The Secretary of Labor will be, as now in the conference report, setting standards. However, he can appoint advisory committees to help him devise the proper standards. This he is ready to do.

Since the House did not at that time vote to stand by the House position we then could not secure a compromise offer on the part of the Senate which they were ready to do.

Now, that has happened on more than one occasion, I mentioned it in the manpower and public service employment bill.

Now, I raise this to my colleagues in the House because I think there is a problem that confronts us when Members of the Congress who are conferees who personally do not agree with the action of the House do not stand by the action of the House. The Senator from New York, who serves on the conference committee, is a good example of the way House conferees should conduct themselves. He has many times stated that he stood by the position of the Senate even though he did not personally agree with it. It makes a problem, as you know, when the Senators stand adamantly by the position of the Senate, but House conferees cave easily and accept the Senate position without compromise.

I just mention that point because I think we should bear this in mind, because many times in the future the House Committee on Education and Labor members will be going to conference. It may be necessary to instruct the conferees before they go. I raise the point because the House may end up with an EEOC bill before we adjourn, and we may need to instruct the conferees, if that happens.

I will yield to the gentleman from Kentucky (Mr. Perkins) if the gentleman wants to respond to that.

Mr. PERKINS. Mr. Speaker, will the gentleman yield?

Mr. QUIE. I yield to the gentleman.

Mr. PERKINS. Mr. Speaker, I do not think the inference should be left with the Members of the House that the chairman of the conferees asserted the House position.

Mr. QUIE. No, I would say to my colleagues that in this occupational and health and safety bill, the chairman of the committee stood by the position of the House. In fact it was the leadership of the chairman of the committee that enabled us to come back with this good compromise and in this regard, I say it is a good compromise. He took it upon himself to stand by the position of the House. I know many members on our side were wondering after the Steiger-Sikes substitute was adopted whether the chairman would or not. We were pleased that he did, and very strongly.

There is no criticism at all of the chairman on this bill. But if at least one other on his side had supported him an even better compromise would have been before us.

I just want to raise it now so that it can be discussed. Legislative reform has passed but we may have to take some action on this in the future.

Mr. STEIGER of Wisconsin. Mr. Speaker, will the gentleman yield?

Mr. QUIE. I yield to the gentleman.

Mr. STEIGER of Wisconsin. Mr. Speaker, I want to join with the distinguished gentleman from Minnesota. I think he is correct in his

analysis. I do think it is important for the House to know two things. One—and in this I completely agree with the gentleman from Minnesota—that in this conference committee the distinguished chairman of the Committee on Education and Labor, the gentleman from Kentucky (Mr. Perkins) did, in fact, do an outstanding job in working to add to the House position. I think the House owes to him a debt of gratitude for his posture in this conference.

But, second, it is also quite clear that the Committee on Education and Labor tends to operate as a free agent in a conference committee, and it does not tend at least on the part of the majority of the conferees on the majority side to act in behalf of the position of the House—but it tends to act on its own behalf or within its own framework of reference. That is the problem about which the House must be concerned, in my judgment, and I think the gentleman from Minnesota has done a service to the House in raising it today on this particular conference report.

MR. QUIN. I would say that I want to raise it on this conference report which I accept and I have no feeling of being critical of the chairman of the committee when I raised it because I can assure the Members that we would not have got a conference report even with the six out of eight Republicans who signed the conference report, if it had not been for his leadership.

MR. SCHERER. Mr. Speaker, will the gentleman yield?

MR. QUIN. I yield to the gentleman.

MR. SCHERER. Mr. Speaker, I would like to take this opportunity to pursue the colloquy concerning the decision made by the conferees regarding occupational health and safety.

I, too, have noticed the discrepancy when conferees of the House do meet with the other body that we have a tendency of capitulating on almost everything in contention. We did it on manpower—we've done it on numerous other matters of disagreement. Without trying to castigate anybody for what happened, I do think that this side of the aisle, once we saw what was happening in the conference committee, should have determinedly maintained the position of the House and declined to sign the conference report, our committee should have insisted on a facsimile of the fine substitute that was authored by the gentleman from Wisconsin (Mr. Stouffer) and the gentleman from Florida (Mr. Sikes).

We did not salvage a blessed thing in conference and I believe we will really be doing the people of this country a disservice if we adopt the conference report today.

MR. QUIN. Mr. Speaker, I know the gentleman from Iowa feels that way about it. But the point is that in signing the conference report, others of us feel this was a good enough compromise to bring back.

As I mentioned, I think we could have and should have done better on the House position. But some of the most important parts of this legislation passed in the House did prevail. The question really comes to whether it should be the Secretary of Labor or the Board who sets standards. There is a deep feeling about that, but I do not think the difference is as great as some of the more substantive parts of the bill—where the House position prevailed—and on those I was very pleased.

MR. HATCHER. Mr. Speaker, will the gentleman yield?

MR. QUIN. I yield to the gentleman.

Mr. HENDERSON. Mr. Speaker, I would like to ask the gentleman the conference report provides for 35 supergrade positions for new positions authorized in the legislation.

Mr. QUIE. I yield to the gentleman from Wisconsin (Mr. Steiger) to answer that question in detail, but my understanding is that the answer is in the affirmative.

Mr. STEIGER of Wisconsin. Section 30 of the conference report which I found on page H11810 of the CONGRESSIONAL RECORD does list the additional supergrade positions. This was a provision found not in the House bill but the bill that passed the other body, and the House acceded to the Senate position. There is, in addition to that, section 29, in addition to the Secretary of Labor. That, too, was in the Senate version and not in the House version.

Mr. HENDERSON. Mr. Speaker, Will the gentleman yield?

Mr. QUIE. I yield to the gentleman from North Carolina.

Mr. HENDERSON. I think it is time and timely that as chairman of the Manpower and Civil Service Subcommittee, which has the responsibility for authorizing supergrades for the various departments and agencies through the Civil Service Commission, I point out that this is going to be the procedure, the Department of Labor, which will get these additional 35 will be called before our subcommittee and their entire supergrade structure reviewed next year. I thank the gentleman for yielding.

Mr. QUIE. I imagine they will note the gentleman's statement in the Record.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. QUIE. I yield to the gentleman from Iowa.

Mr. GROSS. As a member of the subcommittee chaired by the gentleman from North Carolina (Mr. Henderson), I want to join in his comments and say to the gentleman that I think the House conferees exceeded their authority in sticking 35 supergrades in this bill and, as far as I am concerned, our subcommittee will do anything and everything possible to eliminate 35 supergrades here provided.

Mr. PERKINS. Mr. Speaker, I yield 10 minutes to the distinguished author of the bill, the gentleman from New Jersey (Mr. Daniels). (Mr. Daniels of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. DANIELS of New Jersey. Mr. Speaker, I support the conference report on S. 2193, the first comprehensive job safety bill ever to be brought before this body for final passage. Landmark legislation which directly affects the lives of America's 80 million workingmen and women.

S. 2193 will authorize the Secretary of Labor to set standards to insure safe and healthful working conditions for working men and women, to assist and encourage States to participate in efforts to assure health working conditions, and to provide for research, information, education, and training in the field of occupational safety and health. Fifteen days of hearings before the Select Subcommittee on Labor this session vividly pointed out the urgent need to end the carnage in our factories and farms which annually claims 14,500 lives and cause 2.2 million injuries. Passage of S. 2193 will emphasize the commitment of the Federal Government to insure that America's workers will be able to work in surroundings free from hazards and insidious pollutants.

There were 195 points of disagreement between the House and Senate versions of S. 2193 when the bills went into conference. The conferees spent 5 days working to find the fair and reasonable compromise contained in this conference report.

During debate on the House floor we heard fears expressed that if much authority under the act were vested in the Secretary of Labor, he could be policeman, judge and jury. Mindful of the House concern, the conferees agreed that the Secretary of Labor would only promulgate occupational safety and health standards and issue citations with reasonable promptness when he believes that an employer has committed a violation.

An occupational safety and health review commission composed of three members appointed by the President for 6-year terms is charged with the responsibility to hear appeals and set penalties for violations.

As an additional safeguard of the rights of employers and employees, the conference report provides for judicial review of commission decisions in the court of appeals. The review criteria is based on substantial evidence, thus guaranteeing to all parties adequate due process of law.

The Senate bill provides for administrative closing of worksites for 72 hours without a court order in cases where an inspector determines an imminent danger exists. The House Conferees, cognizant of the concern of its Members over arbitrary action by inspectors, insisted on the House language requiring the Secretary to obtain a court order before any worksite can be closed.

Another point where the Senate bill and House amendment differed was in the case of penalties. The Senate version included mandatory penalties for all violations which were not of a de minimis nature. The House bill had provisions for both mandatory and discretionary penalties for violations. Again, your managers retained the House version.

Where the Senate provided for criminal penalties for willful violations, the House amendment provided for no such criminal procedures. However, in conference it was resolved that the only criminal penalties would be for a willful violation of standards, rules, regulations or orders resulting in the death of an employee.

The conference report presented to this body today emphasizes the preventative rather than the punitive aspect of job safety regulation. Your managers are most pleased that the legislation includes excellent provisions for research into health hazards, for monitoring pollutant levels, for a national institute for occupational safety and health, and for a national commission to undertake an effective study and objective evaluation of state workmen's compensation laws and report its findings and recommendations to the Congress and the President no later than July 31, 1972.

Mr. Speaker, the House of Representatives has an opportunity today to approve the conference report on S. 2193 and set in operation the first omnibus job safety and health law in this Nation's history. The conference report is a fair and reasonable compromise with the matters in difference between the Senate and House passed bills, and we present to this body an equitable and balanced occupational safety and health bill which I strongly support. I trust that this conference report will meet with the unanimous approval of all of my colleagues.

Mr. Burgess of California. Mr. Speaker, will the gentleman yield?

Mr. DANIELS of New Jersey. I am happy to yield to the gentleman from California, who has worked so long and hard on this very important legislation.

Mr. BURTON of California. I would like at this point in the deliberations to commend our distinguished colleague from New Jersey, Congressman Daniels.

The passage of the Daniels occupational health and safety bill will certainly be recorded as landmark legislation in terms of improving the well-being of the men and women of this country. No one man can be credited any more than our able and hard-working and effective chairman, the gentleman from New Jersey, the Honorable Dominick Daniels.

Mr. DANIELS of New Jersey. Mr. Speaker, I thank the gentleman from California for his kind remarks.

Mr. Speaker, I would like to take this opportunity to commend all the members of my subcommittee for their work and their contribution in bringing about this very important piece of legislation for America's working men and women. Particularly I would like to commend the distinguished gentleman from Kentucky, the chairman of the full Committee on Education and Labor, the Honorable Mr. Perkins, for his leadership in conference and in bringing about a reasonable settlement of the matters in dispute between both bodies.

In addition thereto, I would like to single out several members of the conference who did yeoman work in bringing this conference report to us today, including the gentleman from Maine (Mr. Hathaway) the gentleman from California (Mr. Burton) and the gentleman from Wisconsin (Mr. Steiger) our distinguished colleague who made many valuable contributions and whose imprint is found throughout this legislation.

I also wish to commend the distinguished gentleman from Minnesota, Mr. Quie.

I would like to mention the names of all the members, but the particular gentlemen whose names I have mentioned have worked most diligently in bringing about this conference report.

Mr. AYRES. Mr. Speaker, it is indeed gratifying that after the arduous labors of the past 3 years we have finally succeeded in passing a Federal occupational safety and health statute which reflects a broad consensus among the Members of both Houses of Congress. In my opinion, and I am certain that opinion is shared by most of us, the conference report approved in this Chamber and in the other body, will prove a highly effective measure in providing strong protections for our Nation's workers as they face the hazards which now accompany every industrial occupation. And what is equally important, these protections will be achieved without sacrificing due process.

Those whom the new measure will require to adhere to safety and health standards prescribed by the Federal Government, the employers of America, are treated with both realism and equity in the procedures by which the statute will be administered. No impossible demands are made upon them—and where impossibilities of compliance arise, means exist for dealing with the problem. I congratulate my fellow committee members on the ingenuity with which they resolved some of these difficulties.

Above all, I wish to emphasize that the new measure also represents the attainment of a goal sought by our President from almost the

beginning of his administration. A substantial portion of its specific provisions are entirely consistent with the President's recommendations both in principle and often in detail. And I am delighted that the administration, speaking through the Secretary of Labor, gave its unqualified approval and support to the results produced by the House and Senate conferees. This assures that their report will become law and thus that our country will have taken a giant step forward in making the place where the American worker spends a large part of his life, as safe and as healthful as human intelligence and good will can make it.

Mr. PERKINS. Mr. Speaker, I yield 10 minutes to the distinguished gentleman from Wisconsin (Mr. Steiger).

(Mr. STEIGER of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. STEIGER of Wisconsin. Mr. Speaker, I appreciate the distinguished gentleman from Kentucky, the chairman of the committee, yielding this time.

When the House considered the occupational health and safety bill, the distinguished gentleman from Florida (Mr. Sikes) and I had before this House a substitute bill for that reported by the Committee on Education and Labor.

The House, as all Members are aware, adopted the so-called Steiger-Sikes substitute by a vote of 220 to 172. What we have before us in this conference report I believe is a legitimate and honest compromise between the so-called Williams bill as adopted by the other body and the Steiger-Sikes substitute adopted in the House.

There is more than enough credit to go around to Members on both sides of the aisle and to those like the Secretary of Labor and his Under Secretary, and to the President, who have called for and consistently worked for this legislation.

It is fair to say, Mr. Speaker, I believe, that there is no more important labor bill in this session of Congress than this one. The conference report contains many of the provisions of the bill which the gentleman from Florida (Mr. Sikes) and I introduced in September and which did pass this body.

The conference committee reported the bill will provide a fair and effective means for the setting of and enforcing of standards and, among other provisions, much needed research in the area of occupational safety and health, diseases and injuries. In reflecting the wishes of the House in regard to the important substantive provision of the bill, with the exception of the standard setting board, the conference committee bill does contain provisions which are either identical to or substantially the same as the House-passed bill in the area of the general duty requirement, the test for national review of standards, the insurance of citations, the imminent danger provisions, the penalty provisions, and the establishment of an independent occupational safety and health appeals commission to handle administrative adjudications.

Mr. KEE. Mr. Speaker, will the gentleman yield?

Mr. STEIGER of Wisconsin. I am happy to yield to the gentleman from Iowa.

Mr. KEE. Will the gentleman from Wisconsin take just a moment to evaluate the provisions of this act as they relate to the construction industry?

Mr. STEIGER of Wisconsin. I shall be happy to.

As the gentleman knows, in the House-passed bill we had a provision which would have had all construction handled under Public Law 91-54, the Construction Safety Act. The conference committee commendation is not as good, in my judgment, as that passed by the House. In fact, of all industries in this Nation the construction industry is treated less well under the provisions of the conference report. I would refer the gentleman from Iowa to page H11811, in which there is a discussion of the construction safety concept.

What we have now under this conference report is, first, the continuation of the Construction Safety Act, Public Law 91-54, to cover contractors who have Government contracts. Then we have this omnibus safety and health bill to cover all non-Government contracts. There is a danger of their being dual standards and a duplicating enforcement procedure. But I believe the conference report, may I say to the gentleman from Iowa, has a protection, particularly in the language I will read now:

The conferees intend that the Secretary develop health and safety standards for construction workers covered by Public Law 91-54 pursuant to the provisions of that law and that he use the same mechanisms and resources for the development of health and safety standards for all the other construction workers now covered by this Act, including those engaged in alterations, repairs, painting and/or decorating.

The report goes on to say:

It is understood by the Conferees that in any enforcement proceedings brought under either this Act or under such other Acts, the principle of collateral estoppel will apply.

So one cannot go one route and then change his mind and decide he wants to go another.

Mr. KYL. Mr. Speaker, will the gentleman yield further?

Mr. STEIGER of Wisconsin. I am happy to yield further.

Mr. KYL. Would the gentleman in the well and the chairman of the committee go so far at this point as to say in the RECORD that it is the purpose, the intent of the committee of conference to indicate to the administrative branch that there should be no duplication and that the dual law now on the books so far as construction is concerned must be treated administratively so there is no undue burden placed upon this one industry.

Mr. STEIGER of Wisconsin. I would answer the gentleman from Iowa saying yes. It would be my best judgment that it is the intent of the conferees—and the distinguished gentleman from Kentucky can correct me if he disagrees—first, there should be no duplication; second, there should be as little burden on that industry in terms of how it is operated as there is on any other industry; and third, I think we should all agree that the Secretary of Labor in working with the advisory committee created under Public Law 91-54 can work toward an effective coordination between the two acts.

Mr. PERKINS. Mr. Speaker, will the gentleman yield to me?

Mr. STEIGER of Wisconsin. I yield to the chairman.

Mr. PERKINS. I think the gentleman from Wisconsin has correctly stated the intent of the conferees. We did not take the House provision on construction safety but took the Senate provision. At the same time we used language in the statement of the managers to make clear that with respect to the imposition of penalties for the violation of a

standard promulgated, pursuant to Public Law 91-54 by an employer covered by that act where the Secretary proceeded under one act and failed—or succeeded—he then could not resort to the penalty proceedings in the other act with respect to a construction contractor covered by Public Law 91-54.

Mr. SCHERLE. Will my distinguished colleague yield?

Mr. STEIGER of Wisconsin. I yield to the gentleman from Iowa.

Mr. SCHERLE. Is my understanding correct that if the Secretary of Labor assesses a civil penalty or if under the jurisdiction of the court there is a criminal penalty for a violation of a Government construction contract, the provisions of the occupational health and safety bill 2193 will apply?

Mr. STEIGER of Wisconsin. If I understood the gentleman's question correctly, you are asking me if there is a civil penalty. Is that correct?

Mr. SCHERLE. In one case and, of course, a criminal penalty if it is so adjudicated by a court.

Mr. STEIGER of Wisconsin. I am not sure I can correctly answer you. Let us back up for a minute. As we have drafted the conference report, the Secretary makes a choice. He can decide in the case of a Government contract to rely exclusively on Public Law 91-54, in which case he goes into court for an adjudication of the penalty. Non-Government contracts are covered under the omnibus act.

The gentleman from New Jersey was seeking recognition in order to clarify that further.

Mr. SCHERLE. If my colleague from Wisconsin will yield, I would like to continue this colloquy with the gentleman from New Jersey for the primary reason of establishing legislative history.

Would the gentleman from New Jersey care to reply?

Mr. DANIELS of New Jersey. I would like to point out that the Senate version in the Senate bill contains civil as well as criminal penalties for violation of standards. The House bill merely provided for civil penalties and only a criminal penalty for willful violation. As a result of a compromise, the conferees agreed on civil penalties only and a criminal penalty of \$10,000 and/or 6 months in prison on the first conviction and \$20,000 and 1 year on a conviction after that but only if the violation results in the death of an employee.

Mr. STEIGER of Wisconsin. May I say that that does not answer the distinguished gentleman from Iowa's question. What he is interested in is the question as to whether or not if there is a civil penalty applied for a Government construction contract firm, then where does he go?

Mr. SCHERLE. Will this be under the Construction Safety Act or will it be adjudicated under the occupational health and safety bill, which is compromise legislation?

Mr. DANIELS of New Jersey. If the Secretary proceeds under the Government Construction Health and Safety Act, then it is confined to that act.

I think the gentleman from Wisconsin answered that question earlier that if the Secretary—

The SPEAKER pro tempore. The time of the gentleman from Wisconsin has expired.

Mr. FORTNA. Mr. Speaker, I yield the distinguished gentleman 5 additional minutes.

Mr. DANIELS of New Jersey. If the Secretary elects to proceed under the construction public safety provision and a decision is made thereunder, it becomes more or less res adjudicata so far as proceeding under this particular bill that we are considering today.

Mr. SCHERLE. Mr. Speaker, if the gentleman from Wisconsin will yield further, and in order to simplify my question, I am trying to find out if the Secretary of Labor assesses a civil penalty for a violation under a Government construction contract, does adjudication apply to this compromise legislation?

Mr. STEIGER of Wisconsin. My answer to the gentleman is that the Secretary does not apply penalties. He decides either to use Public Law 91-54, which is the courts, or he decides to go the route of this bill which is the Commission. He cannot go both ways. The construction industry in my judgment would be treated in a manner that ensures that he makes a decision whichever way he wants to go. The Secretary does the inspection, but the Commission would have to enforce and assess a civil penalty for a violation of the standards.

Mr. SCHERLE. And, would that be covered under this compromise legislation?

Mr. STEIGER of Wisconsin. He can proceed under this act; that is correct.

Mr. SCHERLE. And the construction industry would be entirely removed from the legislation which is now law with reference to construction safety?

Mr. STEIGER of Wisconsin. No; they would not be removed, but the Secretary has the choice as to which route he wants to take. That is why I do not think the construction industry was treated equitably under the conference report.

Mr. SCHERLE. Let me say in conclusion that I feel sorry for the construction industry, particularly the way they were treated in this conference committee. I would hope that some decisive legislation will be implemented shortly after the next Congress convenes to establish uniform standards so at least these unfortunate people will know exactly where they stand and what they can expect insofar as rules, regulations and guidelines are concerned.

Mr. STEIGER of Wisconsin. I think it is the express intent of the conference that the Secretary of Labor will proceed initially under this act; and the Commission's findings of fact will be binding upon the Secretary as well as upon the employer in determining whether an additional remedy should be imposed pursuant to other statutory authority.

Mr. HATHAWAY. Mr. Speaker, will the gentleman yield?

Mr. STEIGER of Wisconsin. Yes, I am happy to yield to the gentleman from Maine.

Mr. HATHAWAY. I want to make one observation on the construction safety occupational health and safety operation. I presume that the Secretary in the case posed by the gentleman from Iowa (Mr. Scherle) could get an injunction under one of the sections of this bill and could have a contract canceled and still have a civil penalty imposed by the Commission. But under the doctrine of collateral estoppel if he lost an issue in any one of these tribunals he would forever be barred from raising that issue again. Am I correct in that observation?

MR. STEIGER of Wisconsin. That is correct. I do not think there is any question about it.

May I say, Mr. Speaker, in the remaining moments of my own time that there is much else that deserves comment. I shall include in my remarks, following the remarks delivered here on the floor, an analysis of some of the specific provisions of the conference report.

Mr. Speaker, on balance, I am satisfied that the conference report is closer to the House bill than that passed by the other body, that it upholds the most important concepts contained in the so-called Steiger-Sikes substitute and it is for that reason that this conference report ought to be adopted today and quickly signed into law by the President of the United States.

MR. PERKINS. Mr. Speaker, will the gentleman yield to me?

MR. STEIGER of Wisconsin. Certainly.

MR. PERKINS. Mr. Speaker, I feel that I would really be derelict if I failed to compliment the distinguished gentleman from Wisconsin for his untiring persevering efforts in trying to bring the best legislation possible to this Chamber.

The work that the gentleman has put forth in connection with the Occupational Health and Safety Act was impressive. He helped as much as any other Member in this Chamber to bring it about.

MR. STEIGER of Wisconsin. I thank the gentleman for his gracious comments.

Mr. Speaker, in this session of Congress the House and Senate have passed for the first time in our Nation's history comprehensive occupational safety and health legislation. The conference committee reported bill, which is now before the House, represents an unprecedented response by Congress to the need to help save the lives and protect the health of the working men and women throughout this great Nation.

One of the primary purposes of the bill is to set up a mechanism by which fair and effective occupational safety and health standards can be promulgated so that the many employers and employees throughout the Nation may be guided in their attempts to establish and maintain a safe and healthful work environment.

The conference reported bill is clearly based on the premise of this House that it is with the cooperation of both employers and employees that the act can most effectively meet the challenge of reducing and perhaps eliminating most of the occupational deaths, tragic injuries and diseases which take a large annual toll in terms of the human suffering and loss to the economy caused by these tragedies.

I feel that the conference reported bill is basically sound and provides fair and adequate procedures for the development of standards and their enforcement; I urge the House to vote favorably for the adoption of the conference reported bill.

APPLICABILITY

The coverage of this bill is as broad, generally speaking, as the authority vested in the Federal Government by the commerce clause of the Constitution. The terms of this bill will apply to all businesses having an effect on commerce except where another Federal agency other than the Department of Labor is exercising statutory authority to prescribe or enforce occupational safety and health standards or

regulations. The bill also provides that occupational safety and health standards published under the various procurement laws and the Maritime Safety Act, which are administered by the Department of Labor, shall remain standards under those acts, at least for the time being. It is not the intent of the draftsmen of this legislation that double proceedings occur under one of those acts and under the omnibus Occupational Safety and Health Act which we are considering here today. For example, a proceeding could be pending before the Secretary of Labor for safety violations under the Construction Safety Act while at the same time a proceeding is pending before the Occupational Safety and Health Review Commission under the comprehensive Occupational Safety and Health Act.

Let me add a comment on what may appear to be an inconsistency between the last sentence of section 4(b)(2) and the expedited procedures set out in section 6 to adopt early interim standards. The last sentence in section 4(b)(2) is included to insure that standards under existing laws will not be repealed by this enactment and will remain effective until superseded by the promulgation of standards under section 6(a). At that time the newly promulgated standards will become standards under this Act and existing laws, thereby preserving remedies available under existing laws. To construe this provision otherwise would be to make the early standards-setting procedures in section 6(a) meaningless or a mere redundancy.

DUTIES

The conference bill takes the approach of this House to the general duty requirement that an employer maintain a safe and healthful working environment. The conference-reported bill recognizes the need for such a provision where there is no existing specific standard applicable to a given situation. However, this requirement is made realistic by its application only to situations where there are "recognized hazards" which are likely to cause or are causing serious injury or death. Such hazards are the type that can readily be detected on the basis of the basic human senses. Hazards which require technical or testing devices to detect them are not intended to be within the scope of the general duty requirement. It is also clear that the general duty requirement should not be used to set ad hoc standards. The bill already provides procedures for establishing temporary emergency standards. It is expected that the general duty requirement will be relied upon infrequently and that primary reliance will be placed on specific standards which will be promulgated under the act. After all, as I have already indicated, one of the primary purposes in enacting this legislation stems from the need to provide employers with health standards so that they might better protect the health and safety of the worker by providing the necessary machinery and protective devices in the workplace.

STANDARDS

The conference committee-reported bill provides for the promulgation of early standards by the Secretary of Labor without any hearing. However, these early standards would be limited to national consensus standards and established Federal standards. These early standards could only be adopted pursuant to the authority in section 6(a) within the first 2 years following the day of enactment and when adopted,

would become effective immediately upon publication in the Federal Register.

The permanent standard setting machinery is contained in the conference committee bill under section 6(b). The provisions require the Secretary to establish permanent standards by rule. It is contemplated by the draftsmen that the Secretary will base his decision upon a record which has been contributed to by public and private organizations as well as interested individuals. The permanent standard-setting machinery provides for a hearing upon request of an interested person following to judicial review, as are other standards promulgated under section 6, by an appropriate Federal court of appeals. The Secretary's standard will only be sustained by the court if it is supported by "substantial evidence on the record considered as a whole." Thus, the Secretary must have a record upon which to base his findings and to serve as the basis for judicial review. The act does not provide for an independent board for standard-setting as did the House bill. However, the court review based upon substantial evidence provides a sufficient element of fairness to satisfy me that conference report should be accepted.

As in the House-passed bill, the conference committee reported bill provides that upon publication of a permanent standard, the Secretary may provide for a delay in the effective date of that standard. Such a delay may not exceed 90 days. However, this is not intended to exclude the possibility that a particular standard may provide for graduated requirements to take effect progressively on specific dates even though the intervals between the effective dates of such graduated requirements may exceed 90 days. For example, a standard applicable to a particular industry could provide that, 90 days after issuance, the sound level in the workplace may not exceed X decibels; that 6 months after issuance, the sound level may not exceed X + 5 decibels; and that, 1 year after issuance, the sound level may not exceed X + 10 decibels.

TEMPORARY EMERGENCY STANDARDS

Section 6(c) provides for the expedited procedure for promulgating emergency standards in accordance with the desires of this House. It is intended that this procedure not be utilized to circumvent the regular standard-setting procedures. It should be used only for those limited situations where such emergency standards are necessary because employees are exposed to grave danger from substances or agents determined to be toxic or physically harmful agents, or new hazards. Section 6(c)(1)(B) makes it clear that it is also necessary that the Secretary determine that such a standard is necessary to protect employees from such danger. Thus, where the state of the act is incomplete or in some way lacking so that a determination cannot be made as to whether such a standard will protect employees, in such instances the Secretary would utilize the regular standard setting procedures as provided in subsection 6(b) and not the emergency standard setting authority.

INSPECTIONS AND INVESTIGATIONS

Under the bill the Secretary of Labor would be responsible for conducting inspections and investigations. There are two particular provisions regarding inspections on which I will comment. Subsection 7(c) requires the Secretary, in inspecting a facility, to make use of

the knowledge of employees or their representatives by allowing them to accompany him and/or consult with him throughout the inspection. This provision, as well as a similar provision in the House bill, is intended as a specific aid to the Secretary and should be utilized by him for that purpose.

Section 8(f)(1) applies to situations where employees or their representative believe, in good faith and on a reasonable basis, that a violation of a standard exists which threatens significant physical harm, or that an imminent danger exists. It is expected that the Secretary will use his good judgment in determining whether there are reasonable grounds to believe that a violation exists and will not permit this procedure to be used as an harassment device.

Section 8(f)(1) also requires the Secretary to conduct such inspections as soon as practicable. This language requires the Secretary to act expeditiously. It also is intended to prevent serious disruptions in the systematic conduct of the Secretary's inspection program.

There may be other priorities which involve violations of a serious nature that are known and must be processed ahead of a given employee-requested inspection.

ENFORCEMENT

After an inspection or investigation, a citation may be issued for a violation of any safety or health requirement of the act. In the Senate bill, this citation had to be issued "forthwith." The term, "forthwith," lent itself to an interpretation that would require the issuance of a citation on-the-spot before leaving the premises. The conference committee, however, changed this procedure to require the issuance of a citation with "reasonable promptness" after the completion of an investigation. The "reasonable promptness" standard will allow an investigator, before he issues a citation, to refer to regulations and guidelines issued by the Secretary, consider what is an appropriate abatement period in light of precedent, and consult with other officials about the facts of the case. The period, however, should be a brief interval between an inspection and the issuance of a citation, normally not exceeding 72 hours. The change brings the present language more in line with the citation provisions contained in the House bill.

Under the "penalties" provision, the distinction contained in the House bill between "serious" violations and "non-serious" violations is retained. Thus, there is no requirement that a penalty be assessed when the violation is not a serious one, but a penalty must be assessed where the violation is serious in nature.

ADVANCE NOTICE

The bill prohibits the giving of advance notice of an inspection "without authority from the Secretary or his designee," and violation of the provision carries a fine of not more than \$1,000, or imprisonment of not more than 6 months, or both. It is clear from the language that giving advance notice of inspections is not prohibited where the Secretary believes such notice will further the interests of the act. However, there will be some cases where it will be important that no prior notice be given and therefore the penalty is provided for giving unauthorized notice.

PENALTY COLLECTION

It should also be made clear that the provision for judicial review and enforcement of the Commission's orders contained in section 11 are exclusive. Section 17(m) authorizing actions in the name of the United States for the collection of penalties should be construed narrowly and is intended to be limited to any collection process which may be necessary in order to actually collect the penalty.

RESEARCH AND TRAINING

As I mentioned at the outset, the need for research in the area of occupational injuries and diseases is one of the primary objectives to be achieved by this legislation. In accord with this objective, the conference bill provides, as did the House passed bill, for extensive research by the Secretary of Health, Education, and Welfare. This broad authority is contained in section 20 of the bill and section 22 specifically provides for the creation of a National Institute for Occupational Safety and Health Research in the Department of Health, Education, and Welfare. Among other specific directives to the Secretary of Health, Education, and Welfare, the bill requires the Secretary of Health, Education, and Welfare to publish current listings of workplace related toxic substances. Such a list should be of significant assistance in providing the information necessary for a broad based attack on the problem.

I am proud to have been able to play a part in the development of this historic legislation. As I have indicated, my colleagues and our staffs in the Congress who have labored to produce this legislation deserve the thanks of all working men and women throughout our land. And foremost in the list of those who deserve credit for this legislation is President Nixon, who not only presented to the Congress his own comprehensive occupational safety and health legislation, but also on numerous occasions reminded the Congress of the urgency and necessity for such legislation.

I believe that special credit should also be given to the long and tireless efforts of the men charged with the primary responsibility for administering the law, Secretary of Labor James Hodgson, and Under Secretary Larry S. Iberman who have given strong endorsement to the conference report.

Mr. PRATTIS. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Florida, Mr. Sikes.

Mr. Sikes asked and was given permission to rise and extend his remarks.)

Mr. SIKES. Mr. Speaker, again I pay my respects to my good friend, the distinguished gentleman from Wisconsin (Mr. Stenger), for his long and arduous efforts to insure the passage of a good bill in this field.

Now, at the conclusion of a great deal of work by many people, the House is being asked to make a difficult choice. The bill which has been brought to us by the conferees is not—and I repeat—is not as good a bill as the bill which passed the House. That bill passed with a vote of 362 to 5, and that should have been reason enough for the conferees to meet on the House bill and bring it back to us, but this is not being done.

Let it be understood that the bill on which the conferees have agreed is a better bill than the bill reported by the House committee, and it is a better bill than the one passed by the Senate. Industry generally recognizes this, and is prepared to live with the results, but this bill is not as good as the House bill in many significant respects, and it is not clear in other respects, and that can prove to be a dangerous situation.

The bill has shortcomings which I think are serious. The plan in the House bill for a separate board of experts to administer the health and safety program has been dropped. That was one of the most important features of the House bill. It should be obvious that a better program would result from the establishment of such a board with the responsibility to give full consideration to the many important and manifold requirements of this program. Certainly it is preferable to placing this important and needed program under the Secretary of Labor, who already has a great many responsibilities and obligations.

There are other weaknesses. Some of them are acute. Some of them have been discussed. I want to stress the fact that the construction industry will now find itself operating under two health and accident safety programs, and it takes no wizard to comprehend the serious complexities of operating under two Government programs. It is almost inconceivable that this situation should be allowed to develop.

Unfortunately, the parliamentary situation is such that the House now is forced to vote for or against this bill rather than to send it back to conference. This is an unhappy state of affairs. Most of us are agreed that we want an accident, health, and safety program. Most of us have worked zealously to bring such a program into being. But many of us want a better bill than the one we now have before us. I find it difficult to accept the necessity for completing action on the bill at this time. There will be another Congress. There is no reason to deduce that the next Congress would refuse to accept its responsibility in this field, and that it would not give adequate consideration to the need for legislation of this type. That would be a safer course of action and there need not be much time lost.

But I know that is not what is about to happen. A lot of the people who fought for a better bill are prepared now to throw in the sponge and concede the game. And I know that when the leadership on both sides of the aisle join forces it is not difficult to predict the results.

Now let me say, in all fairness, I respect the work of the people like my good friend, the gentleman from Kentucky (Mr. Perkins), the chairman of the committee, and others on the committee. I know they have worked very hard to bring a good bill from the conference. I realize that many of the provisions of the House bill are contained in the bill before us. The bad part is that so many needed sections of the House bill were deleted. Nevertheless this is a better bill than the Senate-passed bill, and a better bill than the House committee bill.

Mr. STEIGER of Wisconsin. Mr. Speaker, will the gentleman yield?

Mr. SIKES. I yield to the distinguished gentleman.

Mr. STEIGER of Wisconsin. Mr. Speaker, I appreciate the statement of the distinguished and able gentleman from Florida. I hope the House knows how much it meant to have you as one of those who carried such a heavy load in this whole field.

The work of the House in that substitute is a tribute to the work of the gentleman from Florida. This House owes you a debt of gratitude, and I personally owe you a debt of gratitude. I am glad, may I say, that

you did point out to the House that there is a tremendous amount of House language contained in this conference report.

MR. SIKES. I appreciate that statement, coming as it does from a close and very respected friend.

I will conclude by saying that I think it is unfortunate that we came so close and quit too soon. That is why I am going to have to vote against the bill, although I want very much to see such a program in operation.

MR. PERKINS. Mr. Speaker, will the gentleman yield?

MR. SIKES. I yield to my very good friend whom I admire and respect very much.

MR. PERKINS. Mr. Speaker, let me say to my distinguished colleague, the gentleman from Florida, that I disagree on your statement that we quit too soon. We were 7 straight hours at the last conference meeting at which we devoted most of our time to the broad question. We attempted at various times during the 5 days to obtain a Senate concession on this point. When people tell you unequivocally, this is it—and they go out and caucus and come back and tell you this is it—and you ask them again and again and they still are adamant; well, then, somewhere along the line you have to get a bill. I want to assure the gentleman that we did our best. We brought back the best bill we could compliment him for his interest in this legislation. I know his only interest is in doing justice to everybody.

MR. SIKES. I would never want by anything I say to indicate any lack of confidence in my friend or lack of appreciation for his efforts. However, I too, have sat on many House Senate conferences and I have experienced instances where the Senators have said, "This is it—you are going to take what we offer or you are not going to get a bill." In those cases, I find a little extra measure of patience, and a delay of another day or two can work wonders.

MR. PERKINS. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Iowa (Mr. Scherle).

(Mr. Scherle asked and was given permission to revise and extend his remarks.)

MR. SCHERLE. Mr. Speaker, there are few matters of greater importance to both employers and working people than that of on the job safety and health. Presently there is legislation which we are about to give final approval to which would extend the Federal Government, through the Labor Department, into every factory, every plant, and every place of employment in the United States.

Last year, the Nixon administration proposed new safety legislation which took into consideration many of the comments from the previous year's testimony and hearings. The administration approach was showed by many in the business community as a more reasonable method of handling the problem of industrial safety. One of the features of that approach was to establish an independent board to set and interpret safety standards, leaving the enforcement to the concerned departments.

That was involved in the message President Nixon sent to the Congress on August 6, 1969, with his own proposal:

The Comprehensive Occupational Safety and Health Act . . . will correct some of the important deficiencies of earlier legislation . . . It will separate the function of setting safety and health standards from the function of enforcing them. Appropriate procedures to guarantee due process of law and the right to

appeal will be incorporated. The proposal will also provide a flexible mechanism which can reach quickly to the new technologies of tomorrow.

Under the suggested legislation, maximum use will be made of standards established through a voluntary consensus of industry, labor, and other experts. No standard will be set until the views of all interested parties have been heard. This proposal would also encourage stronger efforts at the State level, sharing enforcement responsibility with States which have adequate programs. Greater emphasis will also be given to research and education, for the effects of modern technologies on the physical well-being of workers are complex and poorly understood . . .

(This legislation) . . . can do much to improve the environment of the American worker. But it will take much more than new Government efforts if we are to achieve our objectives. Employers and employees alike must be committed to the prevention of accident and disease and alert to every opportunity for promoting that end. Together the private and public sectors can do much that we cannot do separately.

Regrettably, this philosophy has been rejected by the members of the conference committee in favor of the authoritarian penalty oriented approach to safety. I believe that the conference committee completely disregarded the will of the House and receded on entirely too many important provisions contained in the Steiger-Sikes bill. The measure which is now being presented to the House provides for duplication of coverage in many industries.

The bill recognizes that many employers are already covered by existing Federal safety laws, but does not exclude these employers from additional coverage of the new law. In other words, even though they are now covered by the Construction Safety Act, Walsh-Healy Act or any other Federal safety law, the new act would overlap the existing safety laws and require compliance with each law. This would lead to general confusion, as to what is required by an employer to be in compliance with the Federal laws. The bill specifically recognizes this dilemma, but only requires that the secretary report to Congress on the problem of overlapping statutes within 3 years. It is quite obvious that many employers would be caught in a cross-fire between conflicting safety regulations set by various Federal agencies.

The Federal Safety Inspector will have the power to issue citations for violations of any standard, reporting duties, or where a serious danger potential exists by reason of such violation. This would include a citation where the inspector thinks that the employer has violated the general duty to provide a safe work place and that a serious danger potential exists because of the violation. This issuance of a citation is a new angle in safety legislation and the bill provides that the citation shall be in writing, shall describe the nature of the violation and a reference to the provisions of standards, rules or orders alleged to have been violated and the period of time in which the violation must be corrected. The bill provides that the citation shall be posted at, or near the place of the violation. In other words, this bill is calling for enforcement by publicity.

As it stands at the time of the issuance of this citation, the employer is simply accused of violating one of his duties under the act. However, he must post, in conspicuous places on his bulletin boards and near the place of violation, the accusation of the Federal Government. It can be expected that the unions will make use of these accusations in any bargaining sessions, and in addition, you must remember that the Taft-Hartley Act allows employees, under certain conditions, to leave a job where certain hazardous conditions exist. It is conceivable that

after the employer has been accused of having an unsafe plant that the employees could walk off, and use the accusation of the Department of Labor as the reason for the wildcat strike.

S. 2193 does not contain a provision establishing an independent occupational safety and health board to set standards. Thus, the Senate passed bill does not provide for the distribution of the standard-setting and enforcement functions.

The Senate bill does not provide for setting standards pursuant to the formal procedures of the Administrative Procedure Act. In using only informal procedures, the bill does not provide for the fullest involvement and participation in the development of safety and health standards.

The bill provides that union representatives or any employee representative be allowed to accompany inspectors on their plant tours. The potential abuse of this device as part of an organizing campaign or as part of an effort to ferment labor unrest is obvious.

Additionally, the Williams bill provides that if there is no authorized employee representative, the inspector must "consult with a reasonable number of employees."

By contrast under the Steiger-Sikes bill, employee representatives are allowed to accompany inspectors only when an employer representative does so. There is no provision for "consultation" with employees in the event there is no employee representative.

Therefore, I urge that the House reject the conference report on the grounds that the committee did not give sufficient consideration to the measure which passed the House of Representatives.

Mr. PERKINS. Mr. Speaker, will the gentleman yield for a correction?

Mr. SCHERLE. I yield to the gentleman.

Mr. PERKINS. With respect to the imposition of civil penalties by the Secretary, he can use the Construction Safety Act which we enacted last year or he can use this act. When he takes one route, he is estopped from taking the other. If he elects to take the procedure for enforcement in the Occupational Safety and Health Act and no penalty is assessed, he is estopped from going the other route.

A Government construction contractor could, of course be "black-listed" under the Construction Safety Act and be subjected to a civil penalty as well.

Mr. SCHERLE. That is the point. The construction industry, since it will not know under which law a Secretary of Labor will take action, must make preparations for compliance under both laws.

Let me ask my chairman this question, then: What other industry in the United States is affected similar to the construction industry?

Mr. PERKINS. There is nothing inequitable in the treatment of the construction industry under this act.

Mr. SCHERLE. No, Mr. Chairman, there are none other but this. This is the only one that is regulated under dual masters. It is criminal that the construction industry must suffer this double coverage.

Mr. PERKINS. There are two possible enforcement procedures for builders who are also Government contractors. There is no double coverage or double jeopardy, or other inequity.

Mr. SCHERLE. Yes, that is exactly what I mean. Even they would not have double coverage under this bill. Only one industry is subject to that.

Mr. Speaker, I am not against labor. All I seek is a fair shake for everybody. There are few amendments of greater importance for employers and employees than the one we are faced with this afternoon. There is only one vote that we can honestly cast regarding this legislation—"no." The only bill that we should have passed at this time was the Steiger-Sikes substitute. This conference bill will result in reverberations and repercussions for years to come.

Everybody puts a lot of faith in the present Secretary. However, he will not be there forever. It is possible for the present Secretary to make one interpretation and the next Secretary to come along a few months later and take a different approach.

I yield back the remainder of my time.

Mr. PERKINS. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore (Mr. Albert). The question is on the conference report.

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. QUIE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 308, nays 60, not voting 65, as follows:

[Roll No. 421]

YEAS—308

Adams	Brown, Calif.	Cowger
Addabbo	Brown, Mich.	Culver
Albert	Brown, Ohio	Cunningham
Anderson, Calif.	Broyhill, N.C.	Daniels, N.J.
Anderson, Tenn.	Buchanan	Davis, Wis.
Andrews, N. Dak.	Burke, Mass.	de la Garza
Annunzio	Burlison, Mo.	Delaney
Arends	Burton, Calif.	Dellenback
Ashley	Byrne, Pa.	Denney
Barrett	Byrnes, Wis.	Dennis
Beall, Md.	Carney	Dent
Belcher	Carter	Derwinski
Bell, Calif.	Casey	Diggs
Bennett	Cederberg	Donohue
Berry	Celler	Dulski
Betts	Chamberlain	Duncan
Bevill	Chisholm	Dwyer
Biaggi	Clark	Eckhardt
Biester	Clausen, Don H.	Edmondson
Bingham	Clawson, Del.	Edwards, Ala.
Blanton	Clay	Edwards, Calif.
Blatnik	Cleveland	Eilberg
Boggs	Cohelan	Erlenborn
Boland	Collier	Esch
Bow	Conable	Eshleman
Brademas	Conte	Evans, Colo.
Brasco	Conyers	Evins, Tenn.
Bray	Corbett	Fallon
Brooks	Corman	Fascell
Brotzman	Coughlin	Feighan

Findley	Kleppe	Pollock
Fish	Koch	Preyer, N.C.
Flood	Kyl	Price, Ill.
Flowers	Kyros	Price, Tex.
Foley	Latta	Pryor, Ark.
Ford, Gerald R.	Leggett	Pucinski
Forsythe	Long, Md.	Quie
Fraser	Lowenstein	Quillen
Frelinghuysen	Lujan	Railback
Frey	McCarthy	Randall
Frudel	McClary	Reid, Ill.
Fulton, Pa.	McCluskey	Reid, N.Y.
Fulton, Tenn.	McClure	Reuss
Gaimatzakis	McDade	Riegle
Gammatz	McDonald, Mich.	Robison
Gaydos	McEwen	Rodino
Gastys	McFall	Roe
Glavin	Macdonald, Mass.	Rogers, Colo.
Gibbons	MacGregor	Rogers, Fla.
Goldwater	Madden	Rooney, N.Y.
Gonzalez	Mailliard	Rosenthal
Goodling	Mann	Roth
Gray	Martin	Roybal
Green, Oreg.	Mathias	Ruppe
Green, Pa.	Matsunaga	Ryan
Griffiths	Mayne	St Germain
Grover	Melcher	Sandman
Gubser	Michel	Saylor
Gude	Mikva	Schadeberg
Halpern	Miller, Calif.	Schener
Hamilton	Mills	Schneebeli
Hammerschmidt	Minish	Schwengel
Hanley	Mink	Scott
Hanna	Minshall	Sebelius
Hansen, Idaho	Mizell	Shipley
Hansen, Wash.	Molohan	Shriver
Harrington	Monagan	Sisk
Harsha	Moorhead	Skeebitz
Harvey	Morgan	Slack
Hastings	Morse	Smith, Iowa
Hathaway	Morton	Smith, N.Y.
Hawkins	Mosher	Snyder
Hays	Murphy, Ill.	Springer
Hechler, W. Va.	Myers	Stafford
Heckler, Mass.	Natcher	Staggers
Helstoski	Nedzi	Stanton
Hicks	Nelson	Steed
Hogan	Nichols	Steele
Holifield	Nix	Stenger, Wis.
Hosmer	Obey	Stokes
Howard	O'Hara	Stratton
Hungate	Olsen	Stubblefield
Hunt	O'Neill, Mass.	Stuckey
Hutchinson	Ottinger	Sullivan
Ichord	Patten	Symington
Jacobs	Pelly	Taft
Jarman	Pepper	Talbot
Johnson, Calif.	Perkins	Taylor
Johnson, Pa.	Pettis	Teanue, Calif.
Jones, Ala.	Phillbin	Thompson, Ga.
Karth	Pickle	Thompson, N.J.
Kastenmeier	Pike	Thompson, Wis.
Kazen	Pirnie	Torban
King	Podell	Udall

Ullman	Weicker	Wright
Van Deerlin	Whalen	Wyatt
Vander Jagt	Whalley	Wylie
Vanik	White	Wyman
Vigorito	Widnall	Yates
Waldie	Wiggins	Yatron
Wampler	Williams	Zablocki
Ware	Wilson, Bob	Zion
Watts	Wold	Zwach

NAYS—60

Abbitt	Fisher	Marsh
Abernethy	Flynt	Miller, Ohio
Andrews, Ala.	Foreman	O'Neal, Ga.
Ashbrook	Fountain	Passman
Brinkley	Fuqua	Patman
Broyhill, Va.	Griffin	Poage
Burleson, Tex.	Gross	Poff
Cabell	Hagan	Rarick
Caffery	Haley	Rhodes
Chappell	Hall	Roberts
Clancy	Hébert	Rousselot
Collins, Tex.	Henderson	Ruth
Colmer	Jonas	Scherle
Crane	Jones, N.C.	Schmitz
Daniel, Va.	Kuykendall	Sikes
Davis, Ga.	Landgrebe	Smith, Calif.
Devine	Lennon	Steiger, Ariz.
Dickinson	Lloyd	Teague, Tex.
Dorn	McMillan	Waggonner
Downing	Mahon	Whitehurst

NOT VOTING—65

Adair	Farbstein	Murphy, N.Y.
Alexander	Ford, William D.	O'Konski
Anderson, Ill.	Gallagher	Powell
Aspinall	Gilbert	Purcell
Ayres	Horton	Rees
Baring	Hull	Reifel
Blackburn	Jones, Tenn.	Rivers
Bolling	Kee	Rooney, Pa.
Brock	Keith	Rostenkowski
Broomfield	Kluczynski	Roudebush
Burke, Fla.	Landrum	Satterfield
Burton, Utah	Langen	Stephens
Bush	Long, La.	Tunney
Button	Lukens	Watson
Camp	McCulloch	Whitten
Carey	McKneally	Wilson, Charles H.
Collins, Ill.	May	Winn
Cramer	Meeds	Wolff
Daddario	Meskill	Wylder
Dingell	Mize	Young
Dowdy	Montgomery	
Edwards, La.	Moss	

So the conference report was agreed to.

The Clerk announced the following pairs:

Mr. Rivers with Mr. Adair.
 Mr. Edwards of Louisiana with Mr. Blackburn.
 Mr. Long of Louisiana with Mr. Lukens.
 Mr. Kluczynski with Mr. Broomfield.
 Mr. Rostenkowski with Mr. Wydler.
 Mr. Rooney of Pennsylvania with Mr. Horton.
 Mr. William D. Ford with Mr. Anderson of Illinois.
 Mr. Gallagher with Mr. Rondebush.
 Mr. Aspinall with Mr. Camp.
 Mr. Purcell with Mr. Ayres.
 Mr. Moss with Mr. Brock.
 Mr. Hull with Mr. Mize.
 Mr. Alexander with Mr. Reifel.
 Mr. Charles H. Wilson with Mr. Burton of Utah.
 Mr. Young with Mr. Burke of Florida.
 Mr. Carey with Mr. Meskill.
 Mr. Meeds with Mr. Langen.
 Mr. Dingell with Mr. McKneally.
 Mr. Dowdy with Mr. McCulloch.
 Mr. Satterfield with Mr. Keith.
 Mr. Stephens with Mr. O'Konski.
 Mr. Landrum with Mr. Winn.
 Mr. Kee with Mr. Cramer.
 Mr. Jones of Tennessee with Mr. Watson.
 Mr. Wolff with Mrs. May.
 Mr. Tunney with Mr. Bush.
 Mr. Montgomery with Mr. Button.
 Mr. Daddario with Mr. Collins of Illinois.
 Mr. Baring with Mr. Whitten.
 Mr. Rees with Mr. Farbsteln.
 Mr. Murphy of New York with Mr. Gilbert.

Mr. Clancy changed his vote from "yea" to "nay."

Mr. Broyhill of Virginia changed his vote from "yea" to "nay."

Mr. Dellenback changed his vote from "nay" to "yea."

Mr. Whitehurst changed his vote from "yea" to "nay."

Mr. Coughlin changed his vote from "nay" to "yea."

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

Public Law 91-596
91st Congress, S. 2193
December 29, 1970

An Act

84 STAT. 1590

To assure safe and healthful working conditions for working men and women: by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Act of 1970".

Occupational
Safety and
Health Act of
1970.

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. (2) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) The term "Secretary" mean the Secretary of Labor.

(2) The term "Commission" means the Occupational Safety and Health Review Commission established under this Act.

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.

(4) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(6) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it may be determined by the Secretary that persons interested

and affected by the scope or provisions of the standard have reached substantial agreement on its adoption. (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.

(11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health established under this Act.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this Act.

(14) The term "Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this Act.

APPLICABILITY OF THIS ACT

SEC. 4. (a) This Act shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no United States district courts having jurisdiction.

67 Stat. 462.
43 USC 1331
note.

(b) (1) Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

73 Stat. 688.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-742, Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.) are superseded on the effective date of corresponding standards, promulgated under this Act, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this Act shall be deemed to be occupational safety and health standards issued under this Act, as well as under such other Acts.

49 Stat. 2036.
79 Stat. 1034.
83 Stat. 96.
72 Stat. 835.
79 Stat. 845;
Ante, p. 443.

(3) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

Report to
Congress.

(1) Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

DUTIES

Sec. 5. (a) Each employer—

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Sec. 6. (a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

90 Stat. 381;
81 Stat. 195.
5 USC 552.

Advisory
Committee,
Recommendations.

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(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

Publication
in Federal
Register.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

Hearing,
notice.

Publication
in Federal
Register.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

Toxic
materials.

(6) (A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as

Temporary
variance
order.

practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing. *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice: (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for a temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be verified in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health, Education, and Welfare certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health, Education, and Welfare designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(D) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such least one and intervals, and in such manner as may be necessary for the protection of employees. In

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dition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical technological developments acquired subsequent to the promulgation of the relevant standard.

Medical examinations.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

80 Stat. 383.

Publication in Federal Register.

(c) (1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

Temporary standard.
Publication in Federal Register.
80 Stat. 381;
81 Stat. 195.
5 USC 500.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

Time limitation.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 553(b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment at places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they

Variance rule.

deleter from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employee, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

Publication
in Federal
Register.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

Petition for
Judicial
review.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

ADVISORY COMMITTEES; ADMINISTRATION

Establishment;
membership.

Sec. 7. (a)(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health, Education, and Welfare, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and composed of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

80 Stat. 378.
5 USC 101.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public, and a transcript shall be kept and made available for public inspection.

Public trans-
script.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 5109 of title 5, United States Code.

80 Stat. 416.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(5) An advisory committee may be appointed by the Secretary to assist him in his standard setting functions under section 6 of this Act. Each such committee shall consist of not more than fifteen members

and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards-producing organizations, but the number of persons appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of title 5, United States Code. The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

80 Stat. 416.

Recordkeeping.

(c) In carrying out his responsibilities under this Act, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of title 5, United States Code, including traveltime, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

Ante, p. 198-1.

80 Stat. 499;

83 Stat. 190.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

SEC. 8. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

84 STAT. 1599

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c)(1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as well as indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents at concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

Work-related
deaths, etc.;
reports.

(d) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f) (1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (2) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(g) (1) The Secretary and Secretary of Health, Education, and Welfare are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

Reports,
publication.

(2) The Secretary and the Secretary of Health, Education, and Welfare shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

Rules and
regulations.

CITATIONS

Sec. 10. (a) If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations promulgated pursuant to this Act, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(b) Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Secretary, at or near each place a violation referred to in the citation occurred.

(c) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

PROCEDURE FOR ENFORCEMENT

Sec. 10. (a) If, after an inspection or investigation, the Secretary issues a citation under section 9(a), he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 17 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c), within such time, the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(b) If the Secretary has reason to believe that an employer has failed to contest a violation for which a citation has been issued within the period permitted for its correction, such period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties; the Secretary shall notify the employer by certified mail of such failure, and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(c) If an employer notifies the Secretary that he intends to contest a citation issued under section 9(a) or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days

If the issuance of a citation under section 9(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a) (3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and each order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

80 Stat. 384.

JUDICIAL REVIEW

SEC. 11. (a) Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 10 may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court or leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence at the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evi-

72 Stat. 941;
80 Stat. 1323.

decree on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

(b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 10, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 17, in addition to invoking any other available remedies.

(c) (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discriminated or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action, the United States district court shall have jurisdiction, for cause shown, to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehire or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Establishment;
membership.

Sec. 10. (a) The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who, by reason

training, education, or experience are qualified to carry out the functions of the Commission under this Act. The President shall designate one of the members of the Commission to serve as Chairman.

(b) The terms of members of the Commission shall be six years except that (1) the members of the Commission first taking office shall serve, as designated by the President at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and (2) a vacancy caused by the death, resignation, removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

Terms.

(c) (1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

80 Stat. 460.

“(57) Chairman, Occupational Safety and Health Review Commission.”

(2) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

Ante, p. 776.

“(94) Members, Occupational Safety and Health Review Commission.”

(d) The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

Location.

(e) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint and discharge hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and to determine their compensation in accordance with the provisions of chapter 53 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, that assignment, removal and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.

5 USC 5101,
5331.

Ante, p. 198-1.

(f) For the purpose of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

Quorum.

(g) Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

Public records.

(h) The Commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

28 USC app.

(i) For the purpose of any proceeding before the Commission, the provisions of section 11 of the National Labor Relations Act (29 U.S.C. 161) are hereby made applicable to the jurisdiction and powers of the Commission.

61 Stat. 150;
Ante, p. 930.

84 STAT. 1605

Report.

(j) A hearing examiner appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such hearing examiner by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the hearing examiner shall become the final order of the Commission within thirty days after such report by the hearing examiner, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

90 Stat. 453.

Ante, p. 198-1.

(k) Except as otherwise provided in this Act, the hearing examiners shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5198 of title 5, United States Code. Each hearing examiner shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

SEC. 13. (a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

28 USC app.

(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

REPRESENTATION IN CIVIL LITIGATION

SEC. 14. Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General. 80 Stat. 613.

CONFIDENTIALITY OF TRADE SECRETS

SEC. 15. All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. 62 Stat. 791.

VARIATIONS, TOLERANCES, AND EXEMPTIONS

SEC. 16. The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

PENALTIES

SEC. 17. (a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than \$10,000 for each violation.

(b) Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to \$1,000 for each such violation.

(c) Any employer who has received a citation for a violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of regulations prescribed pursuant to this Act, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$1,000 for each such violation.

(d) Any employer who fails to correct a violation for which a citation has been issued under section 9(a) within the period permitted or its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than \$1,000 for each day during which such failure or violation continues.

84 STAT. 1607

(f) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.

(f) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

65 Stat. 721;
79 Stat. 234.

(h) (1) Section 1114 of title 18, United States Code, is hereby amended by striking out "designated by the Secretary of Health, Education, and Welfare to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act" and inserting in lieu thereof "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions".

62 Stat. 756.

(2) Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111, shall be punished by imprisonment for any term of years or for life.

(i) Any employer who violates any of the posting requirements, as prescribed under the provisions of this Act, shall be assessed a civil penalty of up to \$1,000 for each violation.

(j) The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

STATE JURISDICTION AND STATE PLANS

SEC. 18. (a) Nothing in this Act shall prevent any State agency court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

(b) Any State which, at any time, desires to assume responsibility for the development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing. Notice of hearing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 8, 9, 10, 13, and 17 with respect to comparable standards promulgated under section 6, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the

State plan, that the criteria set forth in subsection (c) are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the determination referred to in the preceding sentence, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (4) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.

(1) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that as the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(2) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(3) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

Sec. 12. (a) It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall, after consultation with representatives of the employees thereof:

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

Continuing
evaluation.

Plan rejection,
review.

72 Stat. 941;
90 Stat. 1313.

62 Stat. 928.

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(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

Recordkeeping.

(4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a) (3) of this section; and

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e) (2) of title 5, United States Code.

Annual report.

b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a) (5) of this section, together with his evaluations of and recommendations derived from such reports. The President shall transmit annually to the Senate and House of Representatives a report of the activities of Federal agencies under this section.

80 Stat., 530.

Report to President.

c) Section 7902(c) (1) of title 5, United States Code, is amended by inserting after "agencies" the following: "and of labor organizations representing employees".

Report to Congress.

d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a) (3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

Records, etc.; availability.

RESEARCH AND RELATED ACTIVITIES

SEC. 20. (a) (1) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Secretary to meet his responsibility for the promulgation of safety and health standards under this Act; and the Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this Act.

(3) The Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will prescribe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

(4) The Secretary of Health, Education, and Welfare shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that

94 STAT. 1611

which is otherwise provided for in the operating provisions of this Act. The Secretary of Health, Education, and Welfare shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

Toxic sub-
stances,
records.

(5) The Secretary of Health, Education, and Welfare, in order to comply with his responsibilities under paragraph (2), and in order to develop needed information regarding potentially toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which the Secretary of Health, Education, and Welfare reasonably believes may endanger the health or safety of employees. The Secretary of Health, Education, and Welfare also is authorized to establish such programs of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the susceptibility of employees to such illnesses. Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. Upon the request of any employer who is required to measure and record exposure of employees to substances or physical agents as provided under this subsection, the Secretary of Health, Education, and Welfare shall furnish full financial or other assistance to such employer for the purpose of defraying any additional expenses incurred by him in carrying out the measuring and recording as provided in this subsection.

Toxic sub-
stances,
publication.

(6) The Secretary of Health, Education, and Welfare shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known toxic substances by general family or other useful grouping, and the concentrations at which such toxicity is known to occur. He shall determine following a written request by any employer or authorized representative of employer specifying with reasonable particularity the grounds on which the request is made, whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found; and shall submit such determination both to employer and affected employees as soon as possible. If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 6, the Secretary of Health, Education, and Welfare shall immediately submit such determination to the Secretary, together with all pertinent information.

Annual
studies.

(7) Within two years of enactment of this Act, and annually thereafter the Secretary of Health, Education, and Welfare shall conduct and publish industrywide studies of the effect of chronic or low-level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging workers.

Inspections.

(b) The Secretary of Health, Education, and Welfare is authorized to make inspections and question employers and employees as provided in section 8 of this Act in order to carry out his functions and responsibilities under this section.

Contract
authority.

(c) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies relating to his responsibilities under this Act. In carrying out his responsibilities

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Under this subsection, the Secretary shall cooperate with the Secretary of Health, Education, and Welfare in order to avoid any duplication of efforts under this section.

(d) Information obtained by the Secretary and the Secretary of Health, Education, and Welfare under this section shall be disseminated by the Secretary to employers and employees and organizations as may be required.

(e) The functions of the Secretary of Health, Education, and Welfare under this Act shall, to the extent feasible, be delegated to the Director of the National Institute for Occupational Safety and Health established by section 22 of this Act.

Delegation of functions.

TRAINING AND EMPLOYEE EDUCATION

SEC. 21. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe and unhealthful working conditions in employments covered by this Act, and (2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

SEC. 22. (a) It is the purpose of this section to establish a National Institute for Occupational Safety and Health in the Department of Health, Education, and Welfare in order to carry out the policy set forth in section 2 of this Act and to perform the functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.

Establishment.

(b) There is hereby established in the Department of Health, Education, and Welfare a National Institute for Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the Secretary of Health, Education, and Welfare, and who shall serve for a term of six years unless previously removed by the Secretary of Health, Education, and Welfare.

Director, appointment, term.

(c) The Institute is authorized to—

(1) develop and establish recommended occupational safety and health standards; and

(2) perform all functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.

(d) Upon his own initiative, or upon the request of the Secretary or the Secretary of Health, Education, and Welfare, the Director is authorized (1) to conduct such research and experimental programs as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and (2) after

consideration of the results of such research and experimental programs make recommendations concerning new or improved occupational safety and health standards. Any occupational safety and health standard recommended pursuant to this section shall immediately be forwarded to the Secretary of Labor, and to the Secretary of Health, Education, and Welfare.

(e) In addition to any authority vested in the Institute by other provisions of this section, the Director, in carrying out the functions of the Institute, is authorized to—

(1) prescribe such regulations as he deems necessary governing the manner in which its functions shall be carried out;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(3) receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)), money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;

(4) in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses including per diem, as authorized by section 5703 of title 5, United States Code;

(7) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or any other provision of law relating to competitive bidding;

(8) make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(9) make other necessary expenditures.

(f) The Director shall submit to the Secretary of Health, Education, and Welfare, to the President, and to the Congress an annual report of the operations of the Institute under this Act, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as he deems appropriate.

GRANTS TO THE STATES

Sec. 23. (a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 18 to assist them—

(1) in identifying their needs and responsibilities in the area of occupational safety and health,

(2) in developing State plans under section 18, or

80 Stat. 416.

83 Stat. 190.

Annual report
to HEW,
President, and
Congress.

(3) in developing plans for—

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(d) Any State agency designated by the Governor of the State receiving a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may not exceed 90 per centum of the total cost of the application. In the event the Federal share for all States under such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may not exceed 50 per centum of the total cost to the State of such a program. The last sentence of subsection (f) shall be applicable in determining the Federal share under this section.

(h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate.

Report to
President and
Congress.

STATISTICS

SEC. 24. (a) In order to further the purposes of this Act, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act. The Secretary shall compile accurate statistics on work injuries and illnesses which shall include disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

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(b) To carry out his duties under subsection (a) of this section, the Secretary may—

(1) promote, encourage, or directly engage in programs of studies, information and communication, concerning occupational safety and health statistics;

(2) make grants to States or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics; and

(3) arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(c) The Federal share for each grant under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(d) The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

Reports.

(e) On the basis of the records made and kept pursuant to section 5(c) of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

(f) Agreements between the Department of Labor and States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded by grants or contracts made under this Act.

AUDITS

Sec. 25. (a) Each recipient of a grant under this Act shall keep such records as the Secretary or the Secretary of Health, Education, and Welfare shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary or the Secretary of Health, Education, and Welfare, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

ANNUAL REPORT

Sec. 26. Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this Act, the progress toward achievement of the purpose of this Act, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports shall include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this Act, defining areas of emphasis for new criteria and standards; an evaluation of the degree of observance of applicable occupational safety and health standards; and a summary

of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of cooperative efforts undertaken between Government agencies and other interested parties in the implementation of this Act during the preceding year; a progress report on the development of an adequate supply of trained manpower in the field of occupational safety and health, including estimates of future needs and the efforts being made by Government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this Act.

NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

SEC. 27. (a) (1) The Congress hereby finds and declares that—

(A) the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation; and

(B) in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

(2) The purpose of this section is to authorize an effective study and objective evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation for injury or death arising out of or in the course of employment.

(b) There is hereby established a National Commission on State Workmen's Compensation Laws.

Establishment.

(c) (1) The Workmen's Compensation Commission shall be composed of fifteen members to be appointed by the President from among members of State workmen's compensation boards, representatives of insurance carriers, business, labor, members of the medical profession having experience in industrial medicine or in workmen's compensation cases, educators having special expertise in the field of workmen's compensation, and representatives of the general public. The Secretary, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare shall be ex officio members of the Workmen's Compensation Commission:

Membership.

(2) Any vacancy in the Workmen's Compensation Commission shall not affect its powers.

(3) The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Workmen's Compensation Commission.

84 STAT. 1617

quorum.

(c) Eight members of the Workmen's Compensation Commission shall constitute a quorum.

Study.

(d)(1) The Workmen's Compensation Commission shall undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation. Such study and evaluation shall include, without being limited to, the following subjects: (A) the amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon, (B) the amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician, (C) the extent of coverage of workers, including exemptions based on numbers or type of employment, (D) standards for determining which injuries or diseases should be deemed compensable, (E) rehabilitation, (F) coverage under second or subsequent injury funds, (G) time limits on filing claims, (H) waiting periods, (I) compulsory or elective coverage, (J) administration, (K) legal expenses, (L) the feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws, (M) the resolution of conflict of laws, extrajurisdictionality and similar problems arising from claims with multistate aspects, (N) the extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist, (O) the relationship between workmen's compensation on the one hand, and old age, disability, and survivors insurance and other types of insurance, public or private, on the other hand, (P) methods of implementing the recommendations of the Commission.

Report to President and Congress.

(2) The Workmen's Compensation Commission shall transmit to the President and to the Congress not later than July 31, 1974, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

Hearings.

(e)(1) The Workmen's Compensation Commission or, on the authorization of the Workmen's Compensation Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings, take such testimony, and sit and act at such times and places as the Workmen's Compensation Commission deems advisable. Any member authorized by the Workmen's Compensation Commission may administer oaths or affirmations to witnesses appearing before the Workmen's Compensation Commission or any subcommittee or members thereof.

(2) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Workmen's Compensation Commission, upon request made by the Chairman or Vice Chairman, such information as the Workmen's Compensation Commission deems necessary to carry out its functions under this section.

(f) Subject to such rules and regulations as may be adopted by the Workmen's Compensation Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule

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pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

Ante, p. 198-1.

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

80 Stat. 416.
Contract
authorization.

(g) The Workmen's Compensation Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(h) Members of the Workmen's Compensation Commission shall receive compensation for each day they are engaged in the performance of their duties as members of the Workmen's Compensation Commission at the daily rate prescribed for GS-18 under section 5332 of title 5, United States Code, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Workmen's Compensation Commission.

Compensation;
travel ex-
penses.

(i) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Appropriation.

(j) On the ninetieth day after the date of submission of its final report to the President, the Workmen's Compensation Commission shall cease to exist.

Termination.

ECONOMIC ASSISTANCE TO SMALL BUSINESSES

Sec. 28. (a) Section 7(b) of the Small Business Act, as amended, is amended—

72 Stat. 387;
83 Stat. 802.
15 USC 636.

(1) by striking out the period at the end of "paragraph (5)" and inserting in lieu thereof "; and"; and

(2) by adding after paragraph (5) a new paragraph as follows:

"(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in the equipment, facilities, or methods of operation of such business in order to comply with applicable standards promulgated pursuant to section 6 of the Occupational Safety and Health Act of 1970 or standards adopted by a State pursuant to a plan approved under section 18 of the Occupational Safety and Health Act of 1970, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of the Small Business Act, as amended, is amended by striking out "or (5)" after "paragraph (3)" and inserting a comma followed by "(5) or (6)".

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting "7(b)(6)," after "7(b)(5),".

80 Stat. 132.
15 USC 633.

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(6) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

79 Stat. 556.
42 USC 3142.

ADDITIONAL ASSISTANT SECRETARY OF LABOR

Sec. 29. (a) Section 2 of the Act of April 17, 1946 (60 Stat. 91) as amended (29 U.S.C. 553) is amended by—

75 Stat. 338.

(1) striking out "four" in the first sentence of such section and inserting in lieu thereof "five"; and

(2) adding at the end thereof the following new sentence, "One of such Assistant Secretaries shall be an Assistant Secretary of Labor for Occupational Safety and Health."

(b) Paragraph (20) of section 5315 of title 5, United States Code, is amended by striking out "(4)" and inserting in lieu thereof "(5)".

ADDITIONAL POSITIONS

Sec. 30. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (8);

(2) striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (9) the following new paragraph:

"(10) (A) the Secretary of Labor, subject to the standards and procedures prescribed by this chapter, may place an additional twenty-five positions in the Department of Labor in GS-16, 17, and 18 for the purposes of carrying out his responsibilities under the Occupational Safety and Health Act of 1970;

"(B) the Occupational Safety and Health Review Commission, subject to the standards and procedures prescribed by this chapter, may place ten positions in GS-16, 17, and 18 in carrying out its functions under the Occupational Safety and Health Act of 1970."

EMERGENCY LOCATOR BEACONS

Sec. 31. Section 601 of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new subsection as follows:

"EMERGENCY LOCATOR BEACONS

"(d) (1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator beacons shall be installed—

"(A) on any fixed-wing, powered aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following the date of enactment of this subsection; and

"(B) on any fixed-wing, powered aircraft used in air commerce after three years following such date.

"(2) The provisions of this subsection shall not apply to jet-powered aircraft; aircraft used in air transportation (other than air taxis and charter aircraft); military aircraft; aircraft used solely for training purposes not involving flights more than twenty miles from the base; and aircraft used for the aerial application of chemicals."

SEPARABILITY

Sec. 32. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances not those to which it is held invalid, shall not be affected thereby.

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APPROPRIATIONS

SEC. 33. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

SEC. 34. This Act shall take effect one hundred and twenty days after the date of its enactment.

Approved December 29, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1291 accompanying H.R. 16785 (Comm. on Education and Labor) and No. 91-1765 (Comm. of Conference).
 SENATE REPORT No. 91-1282 (Comm. on Labor and Public Welfare).
 CONGRESSIONAL RECORD, Vol. 116 (1970):
 Oct. 13, Nov. 16, 17, considered and passed Senate.
 Nov. 23, 24, considered and passed House, amended, in lieu of H.R. 16785.
 Dec. 16, Senate agreed to conference report.
 Dec. 17, House agreed to conference report.

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It is suggested that the Alphabetical Subject Matter Index also be consulted when using this index. The former often contains references to material on particular subjects which was too general to put in this index, or which did not directly deal with the particular section but might be of significance in connection therewith. In the citations to the committee reports, which are reprinted in this committee print, the page references to the committee print are shown in brackets. The page references are to the reports themselves.

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Pp. 3-4, 79, 236, 414, 421-424, 431-443, 446, 452, 631-632, 725-726, 769, 978, 978, 994-996, 1004-1005, 1017, 1035-1037, 1053, 1093, 1094, 1120, 1121, 1217-1218, 1231.

- Exemptions. (*See* "Variations, etc., from occupational safety and health standards.")
- Experts. (*See* "Consultants, employment of.")
- Exposure. (*See* "Toxic, etc., materials or harmful physical agents; Research.")
- Facilities of other Federal, State, or political subdivisions, use by Secretary. (*See* "Services, facilities or personnel of other Federal, State, or political subdivision, use of.")
- False statements. (*See also* "Penalties, criminal.")
- S. Rept. No. 91-1282, pp. 16 [156], 36 [176].
- H. Rept. No. 91-1765, pp. 18 [1171], 41 [1194].
- P. 1246.
- Federal agency safety programs and responsibilities:
- H. Rept. No. 91-1291, pp. 3 [833], 11 [841], 13 [843], 33 [863], 37 [867], 43 [873], 46 [876], 50-51, [880-881].
- S. Rept. No. 91-1282, pp. 18-19 [158-159], 22 [162], 27 [167], 37 [177].
- H. Rept. No. 91-1765, pp. 21 [1174], 42 [1195].
- Pp. 21-23, 62-63, 120-121, 272-274, 414-415, 572-574, 620-621, 625, 649-651, 710-711, 752-753, 810-811, 965-967, 988, 997, 1017, 1019-1020, 1026, 1106, 1132-1133, 1248-1249.
- Federal Aviation Act amendment:
- H. Rept. No. 91-1765, pp. 30-31 [1183-1184], 44 [1197].
- Pp. 483-499, 1258.
- Federal financial assistance to employers. (*See also* "Research; Occupational Safety and Health Standards.")
- H. Rept. No. 91-1291, p. 54 [884].
- S. Rept. No. 91-1282, pp. 20 [160], 38 [178].
- H. Rept. No. 91-1765, pp. 7 [1160], 22 [1175], 43 [1196].
- Pp. 983, 985, 986, 1011, 1235, 1250.
- Federal law enforcement personnel, interference with:
- H. Rept. No. 91-1291, pp. 9 [839], 26 [856], 42 [872].
- S. Rept. No. 91-1282, pp. 16 [156], 36 [176], 43-44 [182-183].
- H. Rept. No. 91-1765, pp. 18 [1171], 41 [1194].
- Pp. 1076-1077, 1104, 1111, 1130, 1246.
- Federal Safety Council, service of representatives of labor organizations on. (*See* "Labor organizations, service on Federal Safety Council.")
- Federal safety laws, effect of Act on other:
- H. Rept. No. 91-1291, pp. 3 [833], 13 [843], 34 [864], 37 [867], 46 [876].
- S. Rept. No. 91-1282, pp. 22 [162], 27 [167].
- H. Rept. No. 91-1765, pp. 4 [1157], 32-33 [1185-1186].
- Pp. 69-70, 130-131, 236-237, 513-514, 533-534, 625, 649-650, 671-672, 676, 710, 717-718, 726, 760, 820-829, 994-996, 1017, 1018-1019, 1108, 1109-1111, 1135-1136, 1204, 1231.
- Federal-State relations. (*See* "State jurisdiction and State plans.")
- General duty of employers:
- H. Rept. No. 91-1291, pp. 3 [833], 21-22 [851-852], 24 [854], 37 [867], 40 [870], 46 [876], 47 [877], 50-51 [880-881], 54 [884].
- S. Rept. No. 91-1282, pp. 9-10 [149-150], 27 [167], 58 [197].
- H. Rept. No. 91-1765, pp. 4 [1157], 33 [1186].
- Pp. 79, 238, 304, 348-349, 379-380, 431, 415-416, 418-419, 534-535, 661, 726-727, 769, 939, 980, 982, 985, 987, 991-992, 1004-1005, 1007, 1010-1011, 1015, 1017, 1020-1022, 1046, 1052, 1058, 1071, 1087-1088, 1089, 1094, 1120, 1204-1205, 1212, 1217, 1232.
- Geographical coverage. (*See* "Applicability of act.")
- Harmful physical agents. (*See* "Toxic, etc., materials or harmful physical agents.")
- Hearing examiners:
- H. Rept. No. 91-1291, p. 50 [880].
- S. Rept. No. 91-1282, pp. 14-15 [154-155], 53 [192], 55 [194].
- H. Rept. No. 91-1765, pp. 15 [1168], 16 [1169], 40 [1193].
- Pp. 392, 463, 466, 469, 991, 1014, 1058, 1097, 1099, 1100-1101, 1123, 1126-1127, 1243, 1244.

Hearings:

H. Rept. No. 91-1291, pp. 3 [833], 4 [834], 5 [835], 7 [837], 10 [840], 16 [846], 17-18 [847-848], 19 [849], 20 [850], 24 [854], 26 [856], 32 [862], 37 [867], 38 [868], 40-41 [870-871], 43 [873], 49 [879], 50 [880].
 S. Rept. No. 91-1282, pp. 7 [147], 8 [148], 14-15 [154-155], 18 [158], 28 [168], 30 [170], 33 [173], 34 [174], 37 [177], 55 [194], 56 [195], 61 [200].
 H. Rept. No. 91-1765, pp. 5 [1158], 8 [1161], 13 [1166], 20 [1173], 38-39 [1191-1192].
 Pp. 298, 336-337, 341, 374-375, 392, 446, 466, 470, 978, 980, 982, 984, 995, 1013, 1017, 1035-1036, 1052, 1058, 1095, 1099-1100, 1103, 1105, 1126, 1128, 1131-1132, 1146, 1201-1202, 1204-1205, 1217-1219, 1233, 1235, 1241, 1247.

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H. Rept. No. 91-1291, pp. 8 [838], 25-26 [855-856], 41 [871], 47 [877], 55-57 [885-887].
 S. Rept. No. 91-1282, pp. 12-13 [152-153], 35 [175], 56-57 [195-196], 59 [198], 60 [199], 63 [202].
 H. Rept. No. 91-1765, pp. 11 [1164], 16-17 [1169-1170], 40 [1193].
 Pp. 106-108, 262-264, 299, 307, 320, 399, 416, 423-426, 433, 442, 447, 448, 451-460, 470, 499-500, 508-509, 515, 516, 520-521, 561-564, 664-665, 742-743, 796-798, 955-957, 978-980, 983, 986, 992-994, 1001, 1005, 1008, 1012, 1015, 1021, 1033, 1046-1047, 1050, 1052, 1058, 1062, 1066, 1071, 1077, 1089, 1101-1102, 1128, 1147, 1149, 1203, 1205, 1210, 1212, 1244.

Independent Board to develop occupational safety and health standards. (See "National Occupational Safety and Health Board.")

Independent Commission to hear violation proceedings. (See "Occupational Safety and Health Review Commission.")

Injunctions. (See "Judicial enforcement or review of orders by Secretary. Imminent danger.")

Inspections and investigations:

H. Rept. No. 91-1291, pp. 4 [834], 6 [836], 10 [840], 12 [842], 22-23 [852-853], 32 [862], 38 [868], 39 [869], 42 [872], 44 [874], 50 [880], 53 [885].
 S. Rept. No. 91-1282, pp. 11-12 [151-152], 18 [158], 31 [171], 32 [172], 35 [173], 36 [176], 38 [178], 58 [197], 59 [198], 61 [200], 64 [203].
 H. Rept. No. 91-1765, pp. 10-12 [1165-1166], 36-38 [1189-1191].
 Pp. 10-13, 46, 92-95, 249-250, 298, 305, 376-371, 398-399, 417, 418, 420, 424, 426, 446, 448, 467, 468, 472, 473, 515, 516, 518, 520, 546, 548, 608-609, 638-639, 663-664, 694, 735-737, 782-785, 949-950, 978-979, 982, 989-990, 1005, 1036, 1047, 1050, 1058, 1076-1077, 1089, 1097-1098, 1104-1105, 1108, 1124-1125, 1131, 1134, 1201-1202, 1218-1219, 1237-1238.

Inspections and investigations, prohibition against advance notice of

H. Rept. No. 91-1291, pp. 9 [839], 26-27 [856-857], 42 [872], 55 [885].

S. Rept. No. 91-1282, pp. 16 [156], 36 [176].

H. Rept. No. 91-1765, pp. 18 [1171], 41 [1194].

Pp. 300, 434, 1053, 1219, 1246.

Inspections and investigations, right of employees' representative to accompany inspector. (See "Employees' representative.")

Inspections and investigations, right of employees to notify Secretary of violations and request inspection:

S. Rept. No. 91-1282, pp. 11-12 [151-152], 32 [172], 59 [198].

H. Rept. No. 91-1765, pp. 11-12 [1164-1165], 37-38 [1190-1191].

Pp. 252-254, 300, 348, 398-399, 416, 418, 432-434, 442, 520, 550-551, 1098-1099, 1071, 1219, 1239.

Interim occupational safety and health standards. (See also "Temporary emergency standards.")

H. Rept. No. 91-1291, pp. 3 [833], 16-17 [846-847], 23 [853], 37 [867], 39 [869], 42 [872], 49 [879], 54 [884].

S. Rept. No. 91-1282, pp. 7 [147], 29-30 [169-170].

H. Rept. No. 91-1765, pp. 7-8 [1157-1158], 43-44 [1186-1187].

Pp. 3-6, 336-337, 341, 633, 727-728, 979-980, 978, 980, 1004, 1035-1036, 1217-1218, 1235.

Interstate commerce. (See "Commerce.")

Investigations. (See "Inspections and investigations.")

judicial action against Secretary under Imminent Danger provision. (*See also* "Imminent danger; Court of Claims.")

H. Rept. No. 91-1291, pp. 8 [838], 25-26 [855-856], 41 [871], 56-57 [886-887].

S. Rept. No. 91-1282, pp. 35 [175], 56-57 [195-196], 59 [198].

H. Rept. No. 91-1765, pp. 17 [1170], 40 [1193].

Pp. 108-111, 307, 426, 508, 511, 1009, 1065-1066, 1102, 1128, 1244.

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judicial enforcement by Secretary of the Interior. (*See* "Secretary of the Interior, provision for judicial enforcement in certain areas by.")

judicial enforcement or review of orders by Secretary:

H. Rept. No. 91-1291, pp. 7-8 [837-838], 24 [854], 25 [855], 41 [871].

S. Rept. No. 91-1282, pp. 10 [150], 13 [153], 34 [174], 35 [175], 56-57 [195-196], 61 [200].

H. Rept. No. 91-1765, pp. 14 [1167], 39 [1192].

Pp. 13-14, 49-53, 108-111, 320, 341-342, 392, 424, 433, 452-454, 456-459, 515, 516 520, 641-642, 665-666, 697-701, 980, 983, 984, 986, 992-993, 1001, 1005, 1009-1010, 1011-1012, 1021, 1050, 1052, 1058, 1207, 1242.

judicial review by persons adversely affected. (*See also* "Court of Claims.")

H. Rept. No. 91-1291, pp. 7-8 [837-838], 10 [840], 24 [854], 32 [862], 40-41 [870-871], 43 [873], 54 [884].

S. Rept. No. 91-1282, pp. 15 [155], 18 [158], 30 [170], 33-34 [173-174], 35 [175], 55 [194], 61 [200].

H. Rept. No. 91-1765, pp. 8 [1161], 36 [1189], 39 [1192].

Pp. 13-14, 49-53, 304, 341-342, 424, 431-432, 435, 1035, 1058, 1059-1060, 1102-1103, 1105, 1129, 1132, 1202, 1210, 1212, 1218, 1220, 1241-1242.

belonging. (*See* "Toxic, etc., materials or harmful physical agents; Occupational Safety and Health Standards.")

labor-management relations:

H. Rept. No. 91-1291, pp. 1 [831], 2 [832], 27 [857], 36 [866], 53 [883], 56 [886], 57 [887].

S. Rept. No. 91-1282, p. 59 [198].

H. Rept. No. 91-1765, pp. 36 [1189], 37 [1190].

Pp. 416, 417, 438, 448, 453, 473, 474, 1050-1052, 1063, 1224.

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H. Rept. No. 91-1291, pp. 11 [841], 33 [863], 43 [873], 46 [876].

S. Rept. No. 91-1282, pp. 18-19 [158-159], 37 [177], 44-45 [183-184].

H. Rept. No. 91-1765, p. 21 [1174].

Pp. 1106, 1132, 1249.

law enforcement personnel. (*See* "Federal law enforcement personnel, interference with.")

legislative recommendations of Secretary. (*See* "Applicability of Act.")

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medical examinations of employees (*See* "Research; Toxic, etc., materials or physical agents; Occupational Safety and Health Standards.")

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National Advisory Committee on Occupational Safety and Health:

H. Rept. No. 91-1291, pp. 5-6 [835-836], 20-21 [850-851], 39 [869].

S. Rept. No. 91-1282, pp. 9 [149], 31 [171].

H. Rept. No. 91-1765, pp. 8-9 [1161-1162], 36 [1189].

Pp. 10, 66-68, 86-87, 248-249, 545-546, 607-608, 638, 714-716, 734-735, 978, 986, 1001, 1236.

National Commission on State Workmen's Compensation Laws:

H. Rept. No. 91-1282, pp. 23-25 [163-165], 40-41 [180-181], 57 [196].

H. Rept. No. 91-1765, pp. 3 [1156], 27-29 [1180-1182], 44 [1197].

Pp. 288-293, 319-320, 443, 446, 522, 524-525, 588-593, 1147, 1151, 1205, 1210, 1231, 1255-1257.

National consensus standards:

H. Rept. No. 91-1291, pp. 2 [832], 16-18 [846-848], 36 [866], 37 [867], 49 [879], 54 [884], 58-59 [888-889].

S. Rept. No. 91-1282, pp. 5-6 [145-146], 26 [166], 28 [168], 57 [196], 59 [198].

H. Rept. No. 91-1765, pp. 3 [1156], 33 [1186].

Pp. 3, 35-36, 78, 235-236, 336, 402, 414, 418, 421-422, 432, 445, 504-506, 511, 532, 601, 631, 683-684, 724, 768, 937, 978, 982-983, 986, 995-996, 1004, 1017, 1035-1036, 1058, 1068, 1090, 1093, 1094, 1120-1121, 1217-1218, 1230-1231.

National Institute for Occupational Safety and Health:

S. Rept. No. 91-1282, pp. 20-21 [160-161], 28 [168], 39 [179], 57 [196].

H. Rept. No. 91-1765, pp. 3 [1156], 23-25 [1176-1178], 43 [1196].

Pp. 279-282, 415, 434, 443, 504-505, 521, 579-582, 1147, 1151, 1205, 1210, 1220, 1231, 1251-1252.

National Occupational Safety and Health Board:

H. Rept. No. 91-1291, pp. 18-19 [848-849], 47-50 [877-880], 51-52 [881-882], 53-54 [883-884].

S. Rept. No. 91-1282, pp. 8 [1186], 54-55 [193-194], 60 [199], 61-63 [200-202].

H. Rept. No. 91-1765, pp. 33 [1186], 34 [1187].

Pp. 42-43, 89-92, 298, 323, 327, 335, 341, 345, 347, 349, 350-362, 363-364, 394, 397, 417, 420, 421, 422-423, 424, 426, 427, 429, 430, 437, 440-441, 442, 443, 446, 447, 448, 464, 467, 511, 513, 524, 690-693, 779-782, 980, 981-983, 989-990, 994-995, 998, 1000-1001, 1014, 1016-1017, 1027, 1050, 1051-1052, 1058, 1063, 1068, 1070, 1072, 1074, 1075, 1079, 1090-1091, 1094-1097, 1107-1108, 1120-1122, 1123-1124, 1134-1135, 1201, 1206-1207, 1208, 1218, 1221, 1222-1223.

Nongovernmental organizations, etc., contracts with. (See "Research: National Commission on Workmen's Compensation Laws.")

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H. Rept. No. 91-1291, p. 50 [880].

S. Rept. No. 91-1282, pp. 15 [155], 55-56 [194-195], 60 [199], 61-63 [200-202].

H. Rept. No. 91-1765, pp. 15-16 [1168-1169], 33 [1186], 39-40 [1192-1193].

Pp. 97-106, 298, 316, 320, 334, 337, 392-393, 417-419, 424, 426-427, 428-429, 430, 435, 436, 437-438, 441, 442, 446, 447, 462-464, 465-469, 470-473, 475-476, 477, 478, 507, 511, 523, 524, 558-561, 787-796, 980, 981-982, 991, 999, 1014-1015, 1050, 1058, 1070, 1074, 1091, 1092, 1093, 1099-1101, 1104, 1119, 1125-1128, 1130, 1131, 1143, 1202, 1206, 1210, 1217, 1242-1244.

Occupational safety and health standards:

H. Rept. No. 91-1291, pp. 2 [832], 16-17 [846-847], 18 [848], 36 [866], 37 [867], 54 [884], 58-59 [888-889].

S. Rept. No. 91-1282, pp. 5-6 [145-146], 26 [166], 28 [168], 57 [196], 59 [198].

H. Rept. No. 91-1765, pp. 4-8 [1157-1161], 33-36 [1186-1189]. Pp. 3-7, 35, 36-42, 78, 235, 238-246, 336-337, 350-362, 402-403, 414-415, 417-418, 420-423, 431, 432, 445, 532, 535-543, 601-605, 631-635, 661-662, 684, 684-690, 725, 727-732, 768, 770-776, 957, 940-945, 978-980, 987, 994-996, 1036-1037, 1053-1054, 1058-1059, 1092-1096, 1119-1122, 1201, 1206-1207, 1210, 1216-1218, 1222-1224, 1232-1236.

Occupational safety and health standards, promulgated by Secretary:

H. Rept. No. 91-1291, pp. 3-5 [833-835], 17-20 [847-850], 37-38 [867-868], 49-50 [879-880], 53-54 [883-884].

S. Rept. No. 91-1282, pp. 1 [141], 6-7 [146-147], 28-30 [168-170], 54-55 [193-194], 58 [197], 61-64 [200-203].

H. Rept. No. 91-1765, pp. 4-5 [1157-1158], 33-36 [1186-1189]. Pp. 3-7, 238-246, 298, 320, 327, 331, 336-337, 345, 367, 397, 417, 421-424, 426-439, 431, 432, 436-438, 442, 443, 445, 446, 448, 462, 463, 464, 467, 472, 477-478, 480, 481, 505-506, 511, 513, 516, 520, 523-524, 535-543, 601-605, 661-662, 978-980, 981-982, 986, 990, 1000-1001, 1004-1005, 1014-1015, 1016, 1027-1030, 1031, 1035-1037, 1047, 1050, 1051-1052, 1058-1059, 1062-1063, 1068, 1070, 1072, 1074-1075, 1079-1080, 1085, 1090-1091, 1139, 1146-1147, 1149, 1201, 1206-1207, 1208, 1209, 1210, 1212, 1217-1218, 1221, 1232-1233.

Other Federal laws and agencies, effect of Act on. (See "Federal safety laws, effect of Act on other.")

Penalties, collection of. (See "Penalties, civil.")

Penalties, civil. (See also "Civil penalties, continuing offenses. Civil penalties, compromise or settlement of. Citations.")

H. Rept. No. 91-1291, pp. 5 [835], 7-8 [847-848], 9 [839], 21-22 [851-852], 23 [853], 24 [854], 26-27 [856-857], 39-40 [869-870], 41-42 [871-872], 50 [880].

S. Rept. No. 91-1282, pp. 14-16 [154-156], 30 [170], 32-33 [172-173], 35 [175].

H. Rept. No. 91-1765, pp. 17-19 [1170-1173], 41-43 [1194-1195].

Pp. 1-10, 13, 113-115, 263-266, 298, 300, 411, 425, 431, 565-566, 612-613, 661-668, 702-703, 744-746, 803-805, 938-939, 978-980, 984, 985, 986-987, 988, 992-994, 1001, 1005, 1010, 1014-1015, 1036, 1062, 1068, 1075, 1089, 1098-1099, 1102, 1103-1104, 1125, 1130-1131, 1202-1203, 1210, 1212, 1213-1215, 1219-1220, 1245-1246.

enalties, criminal:

H. Rept. No. 91-1291, pp. 9 [839], 26-27 [856-857], 42 [872], 55 [885].
 S. Rept. No. 91-1282, pp. 12 [152], 16 [156], 35-36 [175-176], 43-44 [182-183].
 H. Rept. No. 91-1765, pp. 18 [1171], 41-42 [1194-1195].
 Pp. 15-16, 54-55, 266-267, 425, 434, 442, 511, 566-567, 613-614, 668, 702-703, 746-747, 804-805, 959-961, 1005, 1053, 1059, 1073, 1104, 1111, 1130, 1149, 1203, 1210, 1214, 1219, 1246.

erson:

H. Rept. No. 91-1291, pp. 2 [832], 25-26 [855-856], 36 [866].
 S. Rept. No. 91-1282, p. 26 [166].
 H. Rept. No. 91-1765, p. 3 [1156].

Pp. 29, 35, 77, 235, 531, 628, 657, 677, 683, 724, 767, 936, 1093, 1120, 1230.

ersonnel of other Federal, State, or political subdivision, use by Secretary. (See "Services, facilities, or personnel of other Federal, State, or political subdivision, use of.")

lant closures. (See "Imminent danger.")

osting requirements:

H. Rept. No. 91-1291, pp. 7 [837], 23 [853], 40 [870], 57 [887].
 S. Rept. No. 91-1282, pp. 11 [151], 13 [153], 15 [155], 26 [166].

H. Rept. No. 91-1765, pp. 10 [1163], 18 [1171].

Pp. 423-424, 990, 1096, 1099, 1104, 1125, 1130, 1223-1224, 1238, 1246.

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H. Rept. No. 91-1291, p. 17 [847].

S. Rept. No. 91-1282, pp. 6 [146], 57 [196], 59 [198].

H. Rept. No. 91-1765, p. 34 [1187].

Pp. 402, 418, 432, 445, 986, 995-996, 1058, 1201.

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H. Rept. No. 91-1291, pp. 6 [836], 11 [841], 13 [843], 20 [850], 30-31 [860-861], 33 [863], 39 [869], 43 [873].

S. Rept. No. 91-1282, pp. 2 [142], 13 [153], 16-17 [156-157], 19 [159], 31 [171], 36 [176], 37 [177].

H. Rept. No. 91-1765, pp. 10 [1163], 11 [1164], 36 [1189], 37 [1190].

Pp. 1098, 1106, 1108, 1124, 1132, 1135, 1237-1239.

Red tag" orders. (See "Imminent danger.")

egulations:

H. Rept. No. 91-1291, pp. 6 [836], 9 [839], 14 [844], 22 [852], 30 [860].

S. Rept. No. 91-1282, pp. 8 [148], 11 [151], 12 [152], 17 [157], 31 [171], 32 [172], 35 [175], 38 [178], 39 [179], 40 [180], 58-59 [197-198].

H. Rept. No. 91-1765, pp. 10 [1163], 11 [1164], 12 [1165], 37 [1190].

Pp. 1010, 1017, 1098, 1125, 1202, 1219, 1238-1240.

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H. Rept. No. 91-1765, p. 22 [1175].

Pp. 140, 830, 1111, 1138, 1250.

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H. Rept. No. 91-1291, pp. 3 [833], 6 [836], 10 [840], 11 [841], 12 [842], 13 [843], 14 [844], 23 [853], 30-31 [860-861], 33 [863], 34 [864], 37 [867], 40 [870], 43 [873], 44 [874], 45 [875], 46 [876], 54 [884].

S. Rept. No. 91-1282, pp. 16-17 [156-157], 19 [159], 22-23 [162-163], 24-25 [164-165], 27 [167], 31 [171], 32 [172], 36 [176], 37 [177], 38 [178], 39 [179], 40, [180].

H. Rept. No. 91-1765, pp. 19-20 [1172-1173], 21 [1174], 24-25 [1177-1178], 26 [1179], 27 [1180], 28-29 [1181-1182], 37 [1190], 42 [1195], 44 [1197].

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H. Rept. No. 91-1291, pp. 11-12 [841-842], 14 [844], 19 [849], 27-30 [857-860], 44-45 [874-875], 59 [889].

S. Rept. No. 91-1282, pp. 1 [141], 10 [150], 19-21 [159-161], 38-39 [178-179], 57 [196], 59 [198].

H. Rept. No. 91-1765, pp. 21-23 [1174-1176], 42-43 [1195-1196].

Pp. 23-24, 63-65, 126-128, 274-278, 414, 434, 443, 517, 521, 574-579, 621-623, 651-652, 672-673, 711-713, 753-757, 816-818, 830, 967-971, 983, 984, 988, 1001, 1005, 1008, 1010, 1014, 1032, 1057, 1078, 1107-1108, 1134-1135, 1206, 1209, 1210, 1212, 1220, 1249-1251.

Secretary, definition of:

H. Rept. No. 91-1291, pp. 2 [832], 36 [866].

S. Rept. No. 91-1282, p. 26 [166].

H. Rept. No. 91-1765, p. 2 [1155].

Pp. 29, 34, 77, 234, 531, 627, 657, 677, 682, 724, 767, 936, 1066-1067, 1093, 1230.

Secretary of Commerce, proposed enforcement by:

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Secretary of the Interior, provision for judicial enforcement in certain areas by:

H. Rept. No. 91-1291, pp. 3 [833], 36-37 [866-867].

S. Rept. No. 91-1282, p. 27 [167].

H. Rept. No. 91-1765, p. 3 [1156].

Pp. 1093, 1120, 1231.

Separability provision:

H. Rept. No. 91-1291, pp. 14 [844], 46 [876].

S. Rept. No. 91-1282, p. 41 [181].

H. Rept. No. 91-1765, p. 31 [1184].

Pp. 30, 72, 140, 295, 597, 628, 658, 678, 720, 830, 978, 1112, 1138, 1184, 1258.

Separate offenses. (See "Civil penalties, continuing offenses.")

Serious or grave danger. (See also "Violations, serious.")

H. Rept. No. 91-1281, pp. 4 [834], 6 [836], 7 [837], 9 [839], 19-20 [849-850], 23-24 [853-854], 38 [868], 40 [870], 49 [879].

S. Rept. No. 91-1282, pp. 7 [147], 13 [153], 29 [169].

H. Rept. No. 1765, pp. 7 [1160], 33-36 [1188-1189].

Pp. 996, 1094-1095, 1121, 1223, 1235, 1246.

Services, facilities, or personnel of other Federal, State, or political subdivision, use of.

H. Rept. No. 91-1291, pp. 5 [835], 20 [850].

S. Rept. No. 91-1282, p. 30 [170].

H. Rept. No. 91-1765, pp. 9 [1162], 26 [1179].

Pp. 1098, 1124-1125, 1237.

Small businesses:

H. Rept. No. 91-1291, pp. 6 [836], 31 [861], 39 [869].

S. Rept. No. 91-1282, pp. 17 [157], 32 [172], 41 [181], 46 [185], 58 [197].

H. Rept. No. 91-1765, pp. 11 [1164], 29-30 [1182-1183], 37 [1190].

Pp. 124-126, 252, 525-526, 549, 593-594, 785, 802, 814-816, 996, 1004-1005, 1080, 1098, 1107, 1125, 1134, 1206, 1239, 1257.

Solicitor, representation of Secretary by:

H. Rept. No. 91-1291, pp. 8 [838], 41 [871].

S. Rept. No. 91-1282, p. 35 [175].

H. Rept. No. 91-1765, pp. 17 [1170], 40 [1193].

Pp. 112, 264-265, 564, 744, 802, 957, 1100, 1103, 1126, 1130, 1245.

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H. Rept. No. 91-1291, pp. 2 [832], 9-10 [839-840], 13 [843], 30 [860], 32 [862], 33-34 [863-864], 36 [866], 42-43 [872-873], 45-46 [875-876], 51 [881], 59 [889].

S. Rept. No. 91-1282, pp. 4 [144], 10 [150], 18 [158], 23-24 [163-164], 27 [167], 36-37 [176-177], 39-41 [179-181], 54 [193], 57 [196], 58 [197].

H. Rept. No. 91-1765, pp. 3 [1156], 9 [1162], 19-20 [1172-1173], 25 [1178], 26 [1179], 27-28 [1180-1181], 42 [1194], 44 [1197].

Pp. 29, 35, 78, 504, 524-525, 628, 657, 678, 683, 725, 768, 937, 1093, 1120, 1230, 1237, 1247-1248, 1252-1253, 1254, 1255-1257.

State jurisdiction and State plans:

H. Rept. No. 91-1291, pp. 9-10 [839-840], 32-33 [862-863], 42-43 [872-873], 51 [881].

S. Rept. No. 91-1282, pp. 1 [141], 18 [158], 36-37 [176-177], 58 [197], 62 [201].

H. Rept. No. 91-1765, pp. 19-20 [1172-1173], 43 [1195].

Pp. 18-21, 28-62, 116-120, 268-272, 309, 339-341, 342-344, 500-501, 504, 506-507, 511-512, 525, 567-572, 616-620, 646-649, 706-710, 748-752, 805-810, 964-965, 987-988, 997, 1096, 1017-1018, 1079, 1040, 1041-1042, 1067-1068, 1078, 1104-1105, 1131-1132, 1206, 1247-1248.

- ate plans. (See "State jurisdiction and State plans.")
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- S. Rept. No. 91-1282, pp. 18 [158], 39-40 [179-180], 54 [193].
- H. Rept. 1765, p. 25 [1178].
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- H. Rept. No. 91-1291, pp. 13 [843], 33 [863], 45 [875].
- S. Rept. No. 91-1282, pp. 17 [157], 18 [158], 39-40 [179-180].
- H. Rept. 91-1765, pp. 25-26 [1178-1179], 44 [1197].
- Pp. 128-130, 310, 585, 818-820, 996, 1108, 1135, 1206, 1253-1254.
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- Pp. 14, 53-54, 112, 265, 309, 564-565, 612, 642, 666-667, 701-702, 744, 802, 957-958, 988, 1036, 1245.
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